

**BAKER'S
LAWS
RELATING TO
BURIALS.**

THE ROYAL SOCIETY OF HEALTH

FOR THE PROMOTION

Founded 1876

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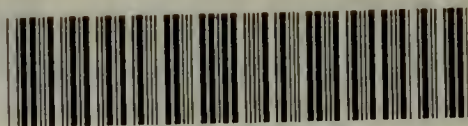
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THE LAWS

RELATING TO

B U R I A L S,

WITH

NOTES, FORMS, & PRACTICAL INSTRUCTIONS.

BY

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OF THE INNER TEMPLE, BARRISTER-AT-LAW,

AUTHOR OF "THE LAWS RELATIVE TO PUBLIC HEALTH,"

ETC., ETC., ETC.

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TO THE FOURTH EDITION.

THE first edition of this volume was published in 1855. After an interval of eighteen years I again respond to the demand for a revised edition, embodying such amendments in the law and judicial decisions as have taken place to the present time.

T. B.

KINGSCOTE, WORKINGHAM,
August, 1873.

PREFACE TO THE THIRD EDITION.

THE favor with which the previous editions of this work have been received by the local authorities to whom the administration of the Burial Laws is entrusted, has encouraged the production of the present revised edition, embodying in the text the various changes which have been introduced by the Legislature since 1857; the additional statutes being also included in the Appendix.

The method of classification adopted affords the nearest approach to consolidation which can be at-

tempted by a compiler ; but the legislation of the last ten years, on the new and politically unimportant subject of burial, presents a striking example of the manner in which the British Statute Book is progressively encumbered. Within this short period a volume has sprung into existence, the matter of which would be more useful and intelligible were it condensed in a few pages.

While, indeed, consolidation of the existing law is talked of, Parliament is actively engaged in rendering more difficult the work of consolidation, by the present system of amending statutes.

Surely, if common sense has decided that our voluminous written law should be brought within reasonable limits, the first step should be to prevent the evil from becoming worse, by simply consolidating every branch which may happen to require revision. The following plan has, it is understood, been recently adopted with regard to Revenue Bills, which are practically settled by the House of Commons alone. Two Bills are introduced : one, after reciting the existing law, purporting to enact in full form the proposed amendments ; the other, embodying such alterations, perhaps by the substitution of a few words, in the statute proposed to be thus amended. Then, after the second reading, the first Bill is dropped in committee, and the old Act remains on the Statute Book in the shape of a revised edition.

Might not the same system obtain in relation to such measures as require the concurrence in detail of the House of Lords ? The Amendment Bill might be

first passed through both Houses, and then referred to a joint legal Consolidation Committee, attended by a Special Professional Clerk, to embody in the previously existing statute the alterations so agreed upon ; this could afterwards be passed *pro formâ*, and receive the Royal Assent, the Original Bill being dropped at that stage (*a*).

By such an arrangement we should, at all events, be saved from plunging deeper into the slough ; and it might be found practicable to dispose of one subject after another, until the entire Statute Book should have been satisfactorily consolidated.

During the ten years since the passing of the first Burial Act in 1852, a great sanitary revolution, as regards the burial of the dead, has quietly taken place in this country. Within these ten years, some four hundred local Burial Boards have been constituted, and there is scarcely a market town of any consequence which has not already provided, or is not now engaged in providing, adequate means for the decent interment of its dead beyond the dwellings of the living.

During these ten years, also, about five hundred Orders in Council have been issued, by which near four thousand old burial grounds, belonging to religious professors of all denominations, have been either

(*a*) In the case of Acts passed about the time of Prorogation, the Consolidation Acts might be passed at the commencement of the ensuing session, repealing those thus temporarily existing in a separate form.

closed or placed under regulation. Perhaps the majority of these consisted of mere scraps of ground wedged in, as it were, between densely inhabited districts; each church or chapel being surrounded with its own precinct of corruption. In the new cemeteries, which are commodious and well drained, sufficient space is provided for all sects and all ranks, uniting thus, after the petty contentions and distinctions of life are over, "all sorts and conditions of men" into one common fold.

Not surcharged burial grounds alone, but the use of vaults under places of worship, has been discontinued under this beneficent legislation. Accordingly, in the metropolis only, nearly one hundred church vaults—each, for the most part, occupying the entire space beneath the building—have been thoroughly disinfected and permanently built up.

An interesting illustration of the cordial manner with which this great social reform has been received by the ratepayers of England, is afforded by the fact that a sum exceeding £1,400,000 has, within the last ten years, been raised for the provision of the parochial cemeteries in question.

4, OLD PALACE YARD, WESTMINSTER,
1st January, 1863.

INTRODUCTION.

THE unsatisfactory state of our Graveyards had long occupied the attention of Clergymen, Philanthropists, and Sanitary Reformers. Though the custom of Interment in Towns was comparatively modern, yet, the practice having become established, when a Church was built a piece of ground was attached and consecrated for the interment of the dead; but in the ignorance of the necessity of sanitary precaution with respect to the living, the laws of decency were not supposed to be violated so long as the corpse was placed out of sight, though but a few inches from the surface.

As population increased, it became necessary, notwithstanding the relief afforded by the opening of Graveyards for Dissenters, to resort to the revolting practice of pit-burial, whereby the substratum of the Churchyard became a continuous mass of coffins. The only rule was the will of the sexton, the only regulating process his boring-iron and spade.

The interment of the dead beneath and around Churches has been called a "distinctive feature of Christian burial;" but the persons who make this assertion forget that burial in the time of Christ was

extramural. The Widow of Nain was following her son out of the city. Lazarus was interred in a cave beyond Bethany. The demoniac at Gadara, dwelling among the tombs near the coast, met Jesus as he approached towards the town; and the Holy Sepulchre was in a garden outside Jerusalem. So far from condemning this custom, our Saviour, in one of his strongest figures, would seem to indicate an approval of it: the hypocritical Pharisees were compared to "whited sepulchres—full of dead men's bones and all uncleanness." The truth is, that we owe the introduction of "Church burial" to the superstitious observances of the dark ages.

The enlightened efforts of Southwood Smith, Walker, Chadwick, and others, during many years, resulted in a measure entitled the Metropolitan Interments Act, 1850. Some defects in this enactment, rendering it inoperative, caused its repeal by the Burials (within the Metropolis) Act, 1852 (15 & 16 Vict. c. 85), which latter Act laid the foundation of the present Law for the establishment and regulation of Burial Grounds throughout the country. Its provisions were extended in the following session to England and Wales by the 16 & 17 Viet. c. 134 (afterwards amended by the 17 & 18 Vict. c. 87), and the whole have been further amended by the 18 & 19 Vict. c. 128, the 20 & 21 Vict. c. 81, &c.

The powers conferred by these several statutes are embodied in the following pages, in which an attempt has been made to consolidate or arrange them in such a manner (by omitting the repealed sections and

inserting the new and altered ones in their proper places) that the whole may be read as one Act:—the consolidation being preceded by a familiar abstract or analysis of the chief enactments, and followed by a chronological arrangement of the statutes in the order and words in which they were passed; and such forms and practical instructions being appended as will, it is hoped, with the Notes and Index, render the matters of easy application to the parties interested in this important Sanitary Movement.

The Act for Scotland, passed in 1855, and that for Ireland, 1856 (since amended), are also appended to this edition.

4, OLD PALACE YARD, WESTMINSTER,
31st August, 1857.

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LAWS RELATING TO BURIALS (p. 19).

OLD BURIAL GROUNDS (p. 19).

Her Majesty in Council, on the representation of the Secretary of State (certain forms having been complied with), may order the discontinuance of burials in any Burial Ground in England and Wales (16 & 17 Vict. c. 134, s. 1), or for preventing vaults or places of burial from becoming dangerous to the public health (20 & 21 Vict. c. 81, s. 23; 22 Vict. c. 1, s. 1). Such Order shall not prevent burial in any Cemeteries that may have been established under the special authority of Parliament (16 & 17 Vict. c. 134, s. 5), but may establish regulations in respect of all burials in common graves in such Cemeteries (20 & 21 Vict. c. 81, s. 10). Any Order in Council may be amended or repealed by any subsequent Order (18 & 19 Vict. c. 128, s. 1). Any person assisting at any burial in violation of such Order is guilty of a misdemeanor (16 & 17 Vict. c. 134, s. 3), and liable to a penalty of 10*l*. (18 & 19 Vict. c. 128, s. 2). Notwithstanding such Order, licence may be granted, under certain circumstances, by the Secretary of State for the continued use of private vaults and graves (16 & 17 Vict. c. 134, s. 4). Incumbent and churchwardens of any parish having a Chapel not locally situate in the parish, the Burial Ground of which Chapel shall have been closed, may convey such Chapel to new trustees (15 & 16 Vict. c. 85, s. 51). The Vestry of any parish in which a closed Burial Ground is situate, not belonging to such parish, may purchase same (20 & 21 Vict. c. 81, s. 8); and trustees of closed Cemeteries may, with sanction of Secretary of State, let, lease, or sell such portions thereof as have not

received interments (s. 24). No new Burial Ground can be opened in any district wherein any Order in Council has been made, without the previous approval of the Secretary of State (16 & 17 Viet. c. 134, s. 6); but after approval and opening, such new grounds cannot be closed in future (s. 5).

APPOINTMENT OF BURIAL BOARDS (p. 34).

The churchwardens of any parish are empowered,—and if any Order in Council has been made, or notice given, they are required—to call a meeting of the Vestry to determine whether a new Burial Ground shall be provided for the parish (18 & 19 Viet. c. 128, s. 3). And if the Vestry shall resolve that a Burial Ground shall be provided, a copy of such resolution must be sent to the Secretary of State (15 & 16 Viet. c. 85, s. 10); and they shall appoint a Burial Board for that purpose, consisting of not less than three or more than nine persons. Incumbent to be eligible, though not a ratepayer (s. 11). One Burial Board may be appointed for several united parishes (18 & 19 Viet. c. 128, s. 11),—but in case any part separately maintains its own poor, or has a separate Burial Ground, or has been divided for Ecclesiastical purposes, previous approval of the Secretary of State is necessary (20 & 21 Viet. c. 81, s. 9; 23 & 24 Viet. c. 64, s. 4; 34 & 35 Viet. c. 33, s. 1),—or for townships having separate Burial Grounds (18 & 19 Viet. c. 128, s. 12), or for districts not maintaining their own poor and having no separate Burial Grounds (20 & 21 Viet. c. 81, s. 5). Vestries of two or more parishes may concur in providing one common Burial Ground (15 & 16 Viet. c. 85, s. 23), in which case all acts may be sanctioned by Vestries of majority of parishes (20 & 21 Viet. c. 81, s. 1); and Vestries may afterwards dissolve the union of such joint Boards (s. 2). Proceedings of Vestries not voidable for want of form unless objected to within seven days (s. 27). Definition of terms (15 & 16 Viet. c. 85, s. 52). Town councils in boroughs may, on petition to the Queen in Council, become the Burial Boards for their respective boroughs (17 & 18 Viet. c. 87, s. 1); and like powers may be exercised by certain Local Boards of Health (18 & 19 Viet. c. 128, s. 20). Such Local Boards, as well as Improvement Commissioners, may also be constituted Burial Boards by Order in Council (20 & 21 Viet. c. 81, s. 4). Vacancies in the Burial Board may be filled up (15 &

16 Vict. c. 85, s. 12 ; 18 & 19 Vict. c. 128, s. 4). The City Commissioners of Sewers are constituted the Burial Board for the City of London (15 & 16 Vict. c. 85, s. 43).

PROCEEDINGS OF BURIAL BOARDS (p. 48).

Meetings regulated by the 15 & 16 Vict. c. 85, ss. 13, 14. Burial Board may appoint clerks, officers, and servants, at reasonable salaries approved by the Vestry (s. 15). They are to keep minutes of their proceedings and accounts open to inspection (s. 16), and allow copies to be taken under penalty for refusal, not exceeding 5*l.* (s. 17). The accounts to be audited annually by persons appointed by the Vestry (s. 18). Any expenses beyond receipts, approved by the Vestry, or in their default by the Secretary of State (18 & 19 Vict. c. 128, s. 6), will be defrayed out of the poor rates (15 & 16 Vict. c. 85, s. 19 ; 18 & 19 Vict. c. 128, s. 13). Money may be borrowed on the security of the poor rates (15 & 16 Vict. c. 85, s. 20). The Public Works Loan Commissioners are authorised to advance money for the purposes of these acts (s. 21). Sinking fund to be provided to pay off mortgages (20 & 21 Vict. c. 81, s. 20), or money may be raised on terminable annuities (s. 21). Any surplus above expenses is to be paid over in aid of the poor rate (15 & 16 Vict. c. 85, s. 22). Burial Boards to be incorporated, and have perpetual succession and a common seal (s. 24).

PROVISION OF NEW GROUNDS (p. 58).

The Burial Board when constituted shall proceed to provide a new Burial Ground, either within or without the parish (15 & 16 Vict. c. 85, s. 25). No Ground provided under these acts can be used for Burials within one hundred yards of any dwelling-house without the consent in writing of the owner, lessee, and occupier of such dwelling-house (Ib. ; 17 & 18 Vict. c. 87, s. 12 ; 18 & 19 Vict. c. 128, s. 9). Part of such new Burial Ground to be consecrated, and part unconsecrated (16 & 17 Vict. c. 134, s. 7) ; but on the unanimous resolution of the Vestry any new Burial Ground may be conveyed and settled in like manner as the old Burial Ground or churchyard, the whole to be consecrated ; and if within ten years afterwards the Vestry should so determine, an unconsecrated ground may be provided separately (18 & 19 Vict. c. 128,

s. 10). Burial Boards may provide more than one Burial Ground (20 & 21 Vict. c. 81, s. 3) ; may purchase Burial Ground provided for a parish under the Church Building Acts (s. 7) ; and may, in certain cases, purchase Cemeteries which have been closed (s. 26).

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The Burial Board may lay out ground to the satisfaction of the Bishop previous to consecration (15 & 16 Vict. c. 85, s. 30) ; and it shall not be necessary to divide the consecrated from the unconsecrated by a wall, but to have boundary marks only (20 & 21 Vict. c. 81, s. 11). In case the Bishop decline to consecrate, the Burial Board may appeal to the Archbishop (s. 12). Chapels may be built (15 & 16 Vict. c. 85, s. 30). Division of the ground into consecrated and unconsecrated portions—and the plans for Chapels to be approved by the Secretary of State (16 & 17 Vict. c. 134, s. 7 ; 18 & 19 Vict. c. 128, s. 14). The expenditure to be approved by the Vestry, or in default by the Secretary of State (18 & 19 Vict. c. 128, s. 6). Burial Boards having Burial Grounds adjoining may contract with each other for use of Chapels in common (s. 16). They may enter into contracts for works under certain conditions (15 & 16 Vict. c. 85, s. 31).

RIGHTS OF PARTIES—FEES (p. 74).

The new Burial Ground, when consecrated, shall be the Burial Ground of the parish, in which all parties shall have the same rights as in the old ground (15 & 16 Vict. c. 85, s. 32). When the Secretary of State shall have certified that the necessary provisions have been complied with, the Incumbent may bury prior to consecration (20 & 21 Vict. c. 81, s. 13). Burial Board may sell rights of burial in vaults, and of erecting monuments, &c., reserving such fees to the Incumbent, in lieu of fees to which he would be entitled in the Burial Ground of his parish, as shall be

fixed by the Vestry, with the approval of the Bishop, or as he would have been entitled to by law should no such settlement be made (15 & 16 Vict. c. 85, s. 33). Burial Boards shall fix such other fees for interments, &c., as may be approved by the Secretary of State (Ib. s. 34; 18 & 19 Vict. c. 128, s. 7). Arrangements between Incumbents of parishes and districts (15 & 16 Vict. c. 85, s. 35). Churchwardens' rights reserved (s. 36). Fees in unconsecrated portion to be identical with those in consecrated, less such fees as are received for Incumbent, &c. (20 & 21 Vict. c. 81, s. 17). Vestries may, with approval of the Bishop, revise the fees payable to Incumbents, clerks and sextons, or substitute fixed annual payments (15 & 16 Vict. c. 85, s. 37). General management of the Burial Ground vested in Burial Board (s. 38). Arrangements between Incumbents of two or more parishes may be made, and confirmed by the Bishop (s. 39). Compensation fee to Incumbent for pauper burial in Cemeteries is not to exceed 1s. or the sum received in his parish Ground, and in no case to exceed 2s. 6d. (s. 49). And the same limit shall apply to Burials at the expense of hospitals (16 & 17 Vict. c. 134, s. 7). Incumbent's compensation fees payable to churchwardens previously entitled to receive the same (15 & 16 Vict. c. 85, s. 50).

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BURIAL OF POOR PERSONS, &c. (p. 93, n.)

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REGULATIONS BY SECRETARY OF STATE (p. 94).

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The several acts are to be construed as one act.

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THE
LAWS RELATING TO BURIALS
IN
ENGLAND AND WALES (*a*).

OLD BURIAL GROUNDS.

IN case it appear to her Majesty in council, upon the representation of one of her Majesty's principal secretaries of state, that for the protection of the public health the opening of any new burial ground in any city or town, or within any other limits, save with the previous approval of one of such secretaries of state, should be prohibited, or that burials in any city or town, or within any other limits, or in any burial grounds or places of burial, should be wholly discontinued, or should be discontinued subject to any exception or qualification, it shall be lawful for her Majesty, by and with the advice of her privy council, to order

(*a*) To render clear the present state of the law at one view under each separate head, it is here proposed to insert the entire provisions of the acts, 15 & 16 Vict. c. 85 ; 16 & 17 Vict. c. 134 ; 17 & 18 Vict. c. 87 ; 18 & 19 Vict. c. 128 ; 20 & 21 Vict. c. 81 ; 22 Vict. c. 1 ; and 23 & 24 Vict. c. 64 (except so far as these have been repealed or altered) ; so as to be read as one act, by giving all those sections of the 15 & 16 Vict. c. 85, which laid the foundation of the general enactments, and adding in each division of the subject such amendments as affect or alter the original provisions. Those portions of the 15 & 16 Vict. c. 85 which relate exclusively to the metropolis, are omitted in this place, as are also the sections

that no burial ground shall be opened in such city or town, or within such limits, without such previous approval, or (as the case may require) that after a time mentioned in the order burials in such city or town, or within such limits, or in such burial grounds or places of burial, shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and so from time to time as circumstances may require (a) : Provided always, that notice of such representation, and of the time when it shall please her Majesty to order the same to be taken into consideration by the privy council, shall be published in the *London Gazette*, and shall be affixed on the doors of the churches or chapels of, or on some other conspicuous places within, the parishes affected by such representation, one month before such representation is so considered : Provided also, that no such representation shall be made in relation to the burial ground of any parish until ten days previous notice of the intention to make such representation shall have been given to the incumbent and vestry clerk or churchwardens of such parish.—16 & 17 Vict. c. 134, s. 1.

It shall be lawful for her Majesty, upon the representation of one of her Majesty's principal secretaries

of the 17 & 18 Vict. c. 87, relating to the appointment of town councils in boroughs, &c., and certain incorporating and repealing clauses ; but each of the acts will be found complete in itself, and in proper chronological order, among the statutes in the Appendix, so that those who may prefer to trace out the several ramifications of the law for themselves have the means of doing so at hand.

(a) All complaints, or applications for the closure of existing burial grounds, for extension of time, for the alteration of Orders in Council or regulations, should be addressed to the Secretary of State, Home Office, Whitehall.

of state, by and with the advice of her privy council, from time to time to order such acts to be done by or under the directions of the churchwardens, or such other persons as may have the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health (a); and every such order in council shall be published in the *London Gazette*, and such churchwardens or other persons shall do or cause to be done all acts ordered as aforesaid, and the expenses incurred in and about the doing thereof shall be paid out of the poor rates of the parish: Provided always, that no such representation shall be made until ten days previous notice of the intention to make such representation shall have been given to the churchwardens or other persons, or one of the churchwardens or other persons, having the care of the vaults or places of burial to which the representation relates.—20 & 21 Vict. c. 81, s. 23.

Where it appears to one of her Majesty's principal secretaries of state, on the representation of any person authorised by him to inspect any vaults or place

(a) This does not apply to grounds which had ceased to be used for burial prior to the passing of the act (*Foster v. Dodd*, 14 L. T., N. S. 327, Law Rep. 1 Q. B. 475; Appendix, p. 246, S. C. on appeal); the authority can only be exercised when an existing burial ground is under the care of churchwardens or other persons who have charge of it for the purposes of burial, 17 L. T. 616, Law Rep. 3 Ex. Ch. 67. In vault burial the separate entombment of coffins with the use of charcoal is frequently resorted to, thus preventing the escape of offensive effluvia on re-opening the vault for future interment. A kind of charcoal well adapted for this purpose, which is made from saw-dust, and, therefore, sufficiently powdered for use, is produced in the chemical manufactory of Pochin & Co., Quay-street, Salford, at a moderate price.

of burial in relation to which an order in council has been or shall have been issued under the said recited enactment, that any acts which by such order in council are ordered to be done by or under the direction of persons other than churchwardens having the care of such vaults or place of burial are not done or performed within a reasonable time, and according to the intent of such order in council, it shall be lawful for such secretary of state, by writing under his hand, to authorise and direct the churchwardens of the parish in which such vaults or place of burial may be situate forthwith to do or complete the acts (a) in such order in council mentioned, or such of them as remain undone, and such order of the secretary of state shall be obeyed by such churchwardens, and they and all persons acting under their direction shall have the same power of entering and doing all such acts upon the premises to which the order in council relates as if the said acts had by the order in council been directed to be done by such churchwardens, and such vaults or place of burial had been under their care ; and any person who shall obstruct such churchwardens or any others acting under their direction in relation to the premises, or remove or interfere with the works done by such churchwardens, shall be guilty of a misdemeanor.—22 Vict. c. 1, s. 1.

The provisions of this act shall not extend to authorise the discontinuance of burials, or to prevent the

(a) An order of her Majesty in council, by virtue of this section, will, it is presumed, justify all acts done under it, including the removal of bodies interred, without a faculty or any other authority.

burial of the body of any person in any cemetery (a) established under the authority of any act of parliament, or in any burial ground or cemetery to be hereafter provided with the approval of one of her Majesty's principal secretaries of state, as herein mentioned.—16 & 17 Vict. c. 134, s. 5.

It shall be lawful for her Majesty, by order made by and with the advice of her privy council, on the representation of one of her Majesty's principal secretaries of state, from time to time to establish such regulations as to her Majesty may seem proper for the protection of the public health, and for the maintenance of public decency, in respect of all burials in common graves in any cemeteries named in schedule (B) to the Act fifteenth and sixteenth Victoria, chapter eighty-five, and in respect of the like burials in any cemetery established under the authority of any local act of parliament ; and every such order in council shall be published in the *London Gazette* ; and all persons having the care of such cemeteries and burial grounds and places shall conform to and obey such regulations ; and any such person who shall violate or wilfully neglect to observe any of such regulations shall, on summary conviction thereof before two justices of the peace, forfeit and pay any sum not exceeding ten pounds : Provided always, that no such representation

(a) There had been considerable difference of opinion as to whether the expressions "cemetery" and "burial ground," used in this section, are synonymous. It has, however, been held that, whether or not, a burial ground established under any of the Church Building Acts is not exempted by this section. See *Reg. v. Justices of Manchester*, Appendix, p. 215 ; but see, also, *Hornby v. Tosteth Park*, p. 227.

shall be made in relation to any eemetery or burial ground until ten days previous notice in writing of the intention to make such representation shall have been given to the person or one of the persons having the control or care of such eemetery or burial ground.—
20 & 21 Viet. c. 81, s. 10.

It shall be lawful for her Majesty, by and with the advice of her privy council, from time to time, to postpone the time appointed by any order in council for the discontinuance of burials, or otherwise to vary any order in council made under any of the said recited acts or this act (whether the time thereby appointed for the discontinuance of burials thereunder or other operation of such order shall or shall not have arrived), as to her Majesty, with such advice as aforesaid, may seem fit ; and every order of her Majesty in council made before the passing of this act for varying any order previously made under the said acts or any of them shall be deemed valid and effectual in law.—
18 & 19 Viet. c. 128, s. 1.

No such order in council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order ; and nothing in this act shall prevent the burial in any such burial ground in which for the time being interment is not required to be discontinued of the bodies of such people and persons respectively ; and no such order in council as aforesaid shall be deemed to extend to any non-parochial

burial ground being the property of any private person, unless the same be expressly mentioned in such order.—16 & 17 Vict. c. 134, s. 2.

It shall not be lawful, after the time mentioned in any such order in council for the discontinuance of burials, to bury the dead in any church, chapel, or churchyard, or burial place, or elsewhere within the parts to which such order extends, or in the burial grounds or places of burial (as the case may be) in which burials have by any such order been ordered to be discontinued, except as in this act or in such order excepted; and every person who shall, after such time as aforesaid, bury any body, or in anywise act or assist in the burial of any body, contrary to this enactment, shall be guilty of a misdemeanor (*a*). 16 & 17 Vict. c. 134, s. 3.

If any person, after the time mentioned in any order in council under the said acts or any of them, or this act, for the discontinuance of burials, shall knowingly and wilfully bury any body or in anywise act or assist in the burial of any body in any church, chapel, churchyard, burial ground, or place of burial, or (as the case may be) within the limits in which burials have by such orders been ordered to be discontinued, in violation of the provisions of any such order, every person so offending shall, upon summary conviction before two justices of the peace, forfeit a sum not exceeding ten pounds (*b*).—18 & 19 Vict. c. 128, s. 2.

(*a*) This term is applied to offences for which no particular name has been provided by law, and may be punished by fine and imprisonment. Any crime less than a felony is called a misdemeanour.

(*b*) It will be observed, that the misdemeanour imposed by 16 & 17 Vict. c. 134, s. 3, *ubi supra*, is not repealed by this section,

Provided always, that, notwithstanding any such order in council, where by virtue of any faculty legally granted, or by usage or otherwise, there is at the time of the passing of this act any right of interment in or under any church or chapel affected by such order, or in any vault of any such church or chapel, or of any churchyard or burial ground affected by such order,

although a specific penalty on summary process is given. It is however presumed, that though there may be a choice of punishments, both would not be enforced. With regard to this last-mentioned penalty, as the act does not provide the means for its recovery, the proceedings will of course be regulated by the provisions of the Administration of Justice (No. 2) Act (11 & 12 Vict. c. 43), [or in case the penalty does not exceed 5*l.* the Small Penalties Act, 28 & 29 Vict. c. 127] which former act consolidates the practice with respect to summary convictions before justices. According to this statute, in all cases where information laid, a summons may be issued, and no objection shall be taken for want of form (s. 1). If disobeyed, warrant may issue (s. 2). Aiders or abettors liable to same penalties (s. 5). Attendance of witnesses may be compelled, who, on refusal to be examined, may be imprisoned not exceeding seven days (s. 7). Costs may be awarded to either complainant or defendant, recoverable by distress, and in default, imprisonment may follow, not exceeding one month, with or without hard labour (s. 18). On conviction, penalties may be levied by distress (s. 19), and, in default of sufficient distress, defendant may be imprisoned for any term not exceeding three months (s. 22). Information may be laid before one justice, who may thereupon summon the offender to appear before two justices—compel attendance of witnesses, and do all other necessary acts preliminary to the hearing, before two justices present and acting together, and after the hearing, one justice may issue all warrants of distress or commitment thereon, though he be not one of the justices who determined the case (s. 29). Sums recovered to be paid to the treasurer of the county, &c. for which justices shall have acted (s. 31). Metropolitan police magistrate or alderman of London may act alone (ss. 33, 34).

On the subject of penalties, it may be well to call attention to the 58 Geo. 3, c. 45, s. 80, which imposes a penalty of 50*l.* on any person ordering or causing the making of any grave (vaults of a certain description excepted) within twenty feet of the external walls of any church erected under the provisions of that act. This penalty is recoverable before any two justices, by distress and sale, one-half to be paid to the informer, and the other to the use of the poor.

and where any exclusive right of interment in any such burial ground has been purchased or acquired before the passing of this act, it shall be lawful for one of her Majesty's principal secretaries of state, from time to time, on application (a) being made to him, and on being satisfied that the exercise of such right will not be injurious to health, to grant license for the exercise of such right during such time and subject to such conditions and restrictions as such secretary of state may think fit, but such license shall not prejudice or in anywise affect the authority of the ordinary, or of any other person who, if this act had not been passed, might have prohibited or controlled interment under such right (b), nor dispense with any consent which would

(a) Such applications should not be deferred until a death has taken place, as then there can be no sufficient time to inquire into the circumstances. The best time is immediately after the order has been made.

(b) Where no order in council has been made by virtue of these statutes, the consent of the incumbent, and his alone, is necessary to burial in any part of his church (Cro. Jac. 367; Gibs. 453; Wats. c. 39—887); but he cannot grant the separate use of any vault either in the church or churchyard without a faculty (*Bryan v. Whistler*, 8 B. & C. 288); nor refuse burial in a vault for which such faculty has been granted. In the case of *Nevill v. Baker* (*Arches Court, not reported*), a clergyman was suspended three months for refusing burial in a family vault. *Per curiam*, The consent of the incumbent to the faculty (for every prescription presumes a faculty), when the vault was constructed, will bind his successor; nor is it necessary to prove the constant use of a vault existing from time immemorial. The head of the family has, moreover, a right to admit any member of the family who, though non-resident, is a parishioner; but no blame would attach for refusing burial in any place proved to be dangerous to health—it would be a duty to do so.

The faculty may be granted for the use of a vault under a chancel originally constructed without a faculty, and where no previous right existed (*Kingsmill v. Rugg*, 16 L. T., N. S. 540; 1 Law Rep. A. & E. 343). But the entrance to the vault not being in consecrated ground held, on appeal, that the faculty should be contingent on

have been required, nor otherwise give to such right any greater force or effect than the same would have had if this act had not been passed.—16 & 17 Viet. c. 134, s. 4.

Where any burial ground in which interment is discontinued under this act belongs to any parish other than that parish within which the same is locally situate, it shall be lawful for the incumbent and churchwardens of the parish to which such burial ground belongs, with the consent of the vestry, or persons possessing the powers of vestry for ecclesiastical purposes of or in such parish, and of the bishop of the diocese, to convey any chapel belonging to such parish, and situate in or attached to such burial ground, and the site thereof, to any persons named by the incumbent and churchwardens of the parish within which the same is situate, with the consent of the vestry, or person possessing the powers of vestry of or in such parish for ecclesiastical purposes, and of the said bishop, and upon such trusts for such last-mentioned parish, and subject to such conditions to be performed on behalf of such parish, and with such provision for the appointment of new trustees, as to the said bishop may seem proper; and such conveyance shall be effectual to pass all the estate and interest vested in any persons in trust or in behalf of the parish to which such chapel and the site thereof belong; and after the execution of such conveyance all obligation on such last-mentioned parish, or any trustees or others on behalf thereof, to re-

sufficient ground being first consecrated near the opening to the vault on which the burial service might be performed, 18 L. T., N. S. 94; Law Rep. 2 P. C. App. 59.

pair such chapel, or to pay any stipend to the minister thereof, or otherwise in relation to or in connexion with such chapel, shall cease.—15 & 16 Vict. c. 85, s. 51.

It shall and may be lawful for the vestry of any parish in which any burial ground closed by order in council may be situate, and which does not belong to such parish, by resolution of the vestry at a meeting called for that purpose, to purchase such burial ground, and from the time of such purchase such burial ground shall belong to such parish, and be subject to all the conditions affecting the burial grounds of the parish in which the same is situate.—20 & 21 Vict. c. 81, s. 8.

In all cases in which unconsecrated land or buildings is or are vested in a trustee or trustees, either under any local act or otherwise, for the purposes of a cemetery or burial ground, and burials in such cemetery or burial ground shall by order in council under the hereinbefore recited acts or any of them have been ordered to be wholly or partially discontinued, it shall be lawful for the trustee or trustees for the time being of such cemetery or burial ground, from time to time, with the sanction of one of her majesty's principal secretaries of state, to let, demise, or lease any part or parts, in which no interment shall have taken place, of such land or buildings, and to renew or accept surrenders of any leases or tenancies thereof, and to sell and absolutely dispose thereof for money in gross, or for any perpetual or other rent or rents to be made payable thereout, and by public auction or private contract, and to sell all or any such perpetual or other rent or rents for money in gross and

in manner aforesaid, and for any of the purposes aforesaid to make and execute any contracts, conveyances, leases, or other assurances, and to take any measures and make any arrangements which may be deemed expedient ; and upon any such lease or sale as aforesaid a grant or conveyance by such trustee or trustees alone shall be a sufficient assurance of the property thereby purported to be leased or sold, and the receipts of such trustee or trustees shall be effectual discharges for the monies therein expressed to have been received, and shall absolve any lessee or purchaser from having to see to or being answerable for the application of such monies ; and the net monies to be received by such trustee or trustees under any of the preceding powers shall be applied by them in discharge of any incumbrances affecting such cemetery or burial ground, and any debts which such trustee or trustees may have properly incurred in their fiduciary capacity ; and any residue of such monies, shall, where such land or buildings shall have been held in trust for any parish, be applied in such manner, for the benefit of such parish, as the vestry of such parish shall direct ; but where such land or buildings shall have been held in trust for the benefit of private persons, such residue shall be divided by such trustee or trustees rateably among the cestuis que trusts ; and it shall be lawful for such trustee or trustees so to apply any reserved fund in his or their hands.—20 & 21 Vict. c. 81, s. 24.

In every case in which any order in council has been or shall hereafter be issued for the discontinuance of

burials in any churchyard or burial ground, the burial board or churchwardens, as the case may be, shall maintain such churchyard or burial ground of any parish (*a*) in decent order, and also do the necessary repair of the walls and other fences thereof, and the costs and expenses shall be repaid by the overseers, upon the certificate of the burial board or churchwardens, as the case may be, out of the rate made for the relief of the poor of the parish or place in which such churchyard or burial ground is situate, unless there shall be some other fund legally chargeable with such costs and expenses (*b*).—18 & 19 Vict. c. 128, s. 18.

(*a*) *I.e.*, belonging to a parish. In the case of *Reg. v. Burial Board of St. John Westgate, and Elswick*, it was held that the board were not chargeable under this section with the repairs of any closed burial ground the property of private persons in the parish, but only of parochial burial grounds which have been closed (see *Appendix*, p. 226). But where local boards of health have been constituted burial boards, they may maintain any burial ground the use of which as such has been discontinued within their district, and repair the fences thereof; and may make bye-laws for the regulation of all burial grounds within their limits (24 & 25 Vict. c. 61, s. 21; *Appendix*, p. 186, n.). Under the 30 & 31 Vict. c. 38, the Bunhill Fields Burial Ground, Middlesex, is to be laid out and preserved as an open space by the Corporation of London.

(*b*) Any nuisance in the churchyard is properly of ecclesiastical cognizance (*Quilter v. Newton*, Carth. 152). By the common law the parishioners are bound to repair the fence of the churchyard at their own charge (Lind. 253; 2 Inst. 489). By prescription the vicar may be liable to repair the fence, and an indictment will lie for a misdemeanour if any damage be occasioned by neglect (*R. v. Reynell*, 6 East, 315). If owners of adjoining lands have been used to repair, such is a good custom, and proceedings may be had at common law for neglect. By Canon 85, the churchwardens are to see to the repair, &c. of the churchyard in manner as accustomed, at the charge of the proper parties. The incumbent may bring his action for any trespass in the churchyard (Bro. Abr. Trespass, 210); so also may his lessee (2 Rol. Abr. 337). Any person guilty of violent or indecent behaviour in any churchyard, or who shall disturb any clergyman celebrating divine service therein, is liable to a penalty of £5 or two months' imprisonment (23 & 24 Vict. c. 32, s. 2), and for damage to any monument or fence

Where by any such order in council as aforesaid it is ordered that no new burial ground shall be opened in any city or town, or within any limits therein mentioned, without the previous approval of one of her Majesty's principal secretaries of state, no new burial ground or cemetery (parochial or non-parochial) shall

to imprisonment not exceeding six months with or without hard labour (24 & 25 Vict. c. 97, s. 39). Trespass lies for the erecutor of a tombstone against a person who wrongfully removes it; although the freehold of the churchyard is in the parson, even he has no right to remove the tombstones, the property of which remains in the persons who erected them (*Spooner v. Brewster*, 3 Bing. 136; *Bryan v. Whistler*, 8 B. & C. 288). Monuments or buildings of height cannot legally be erected without a faculty from the ordinary (*Seager v. Bowle*, 1 Add. 541; *Bardin v. Calcott*, 1 Hagg. Consis. 14). A bequest to churchwardens for keeping certain tombs in repair is void (*Rickard v. Robson*, 8 Jur. N. S. 665). The ecclesiastical court cannot allow any portion of consecrated ground to be converted to secular uses, nor grant a faculty to confirm such appropriation (*Harper v. Forbes*, 5 Jur. N. S. 275; *Rector of Wallbrook v. Parishioners*, 2 Robert, 515; *Walter v. Montague*, 1 Curt. 253); and the court will compel the restoration of any portion of such ground which has been improperly removed (*Jarret v. Steel*, 3 Phillim. 167; *Knapp v. Parishioners of Willesden*, 2 Robert, 364; *Campbell v. Parishioners of Paddington*, Id. 588; *Adlam v. Colthurst*, Law Rep. 2 Ad. & Eccl. 30); but the court will grant a faculty for the erection of schools in a churchyard in certain cases (*The Rector of St. George v. Stewart*, 2 Str. 1126), and especially if the ground be closed under the Burial Acts (*Russell v. Parish of St. Botolph*, 5 Jur. N. S. 300). Where a churchyard which had been closed by order in council had afterwards been taken by a railway company under the Lands Clauses Act, and a sum paid into court, it was held that the rector was entitled to have such sum invested and to receive the dividends, *ex parte, Rector of Liverpool*, 23 L. T., N. S. 354 (see *Appendix*, p. 249). As to rights of dissenters in their burial grounds, see *Moreland v. Richardson*, and *Reg. v. Sharpe*, *Appendix*, pp. 216.

By the 59 Geo. 3, c. 134, s. 39, the Church Building Commissioners may, with consent of two justices, and on notice given according to 55 Geo. 3, c. 68, alter, repair, pull down and rebuild the walls or fences of any existing burial ground of any parish or chapelry; and may also stop up and discontinue, alter or vary, any entrance or gate leading into any burial ground, and the paths, footways and passages into, through, or over the same, as to them may appear useless, or as they shall think fit.

be provided and used in such city or town, or within such limits, without such previous approval (a).—16 & 17 Vict. c. 134, s. 6.

(a) When any new site has been selected, an ordinary letter stating the fact, and requesting approval of the same, should be addressed to the Home Secretary.

With regard to sites for churches and the enlargement of burial grounds, it may be remarked that the 56 Geo. 3, c. 141, s. 1, enables ecclesiastical corporate bodies to alienate lands for these purposes with consent of the patron and ordinary, after valuation by some competent person verified before a justice (2). No such alienation to be questioned for want of form after twenty years (3). All ground which has been or shall be consecrated, shall after twenty years be discharged from all adverse titles, claims and demands whatsoever, and be absolutely vested in trustees or incumbent (4). By 58 Geo. 3, c. 45, the commissioners may accept sites for churches and churchyards (s. 33), which persons under disability are empowered to convey (36), and if unwilling or unable to treat, the matter may be settled by a jury (40). And the same commissioners are empowered by 59 Geo. 3, c. 134, to grant money for providing or enlarging cemeteries (22), or churchwardens may levy rates for these purposes (23). All parishes required by the commissioners shall furnish lauds for enlarging or making additional churchyards as the commissioner shall deem necessary, in the manner therein set forth (36, 7, 8); and under the 3 Geo. 4, c. 72, public departments and all corporations may grant sites for cemeteries without valuable consideration (s. 1). Commissioners may procure or require parishes to obtain sites for additional cemeteries whether contiguous to present site or not (3). And may advance money for the same on security of church rates (5-7), and may take land for the purpose on paying value assessed (8). Or the commissioners may authorise parishes to purchase additional burial grounds which shall be deemed part of parish (26); but the power to make a rate for the purpose, under these acts, has been doubted (see *Whitwick Churchwardens v. Stinson*, 18 J. P. 711; 23 L. J. M. C. 154); and these powers, for the provisions of burial grounds, are for the most part practically superseded by the recent acts embracing the whole subject of burial accommodation.

An addition to any existing churchyard may be consecrated without any fee beyond 5s. for deposit of the consecration deed, 30 & 31 Vict. c. 133 (ss. 1, 2, 3). Persons under disability may convey land for such additions (s. 4), in accordance with form prescribed (s. 5), free of stamp duty (s. 6), to vest as old churchyard (s. 7), saving provisions of former acts (s. 8); exclusive right of burial in portion of such added ground may be secured to the grantor (s. 9), (not exceeding one-sixth part of the whole of the said land, 31 & 32 Vict. c. 47), subject to conditions (s. 10), and such reserved portions

APPOINTMENT OF BURIAL BOARDS.

Upon the requisition in writing of ten or more rate-payers of any parish in which the place or places of burial shall appear to such ratepayers insufficient or dangerous to health (and whether any order in council in relation to any burial ground in such parish has or has not been made), the churchwardens or other persons to whom it belongs to convene meetings of the vestry (a) of such parish shall convene a meeting of

cannot be closed under the burial acts unless by special order (s. 11).

The provisions of the act 13 & 14 Vict. c. 28, for rendering effectual titles of societies to places of worship are by 32 & 33 Vict. c. 26, extended to burial grounds acquired by similar societies; but so as not to interfere with the burial acts.

(a) A vestry, so called from the room where the priest puts on his vestments, in which it is usually held, is the assembly of the parish met in any convenient place for the dispatch of business (Shaw's Par. L. c. 17). By 13 & 14 Vict. c. 57, powers are given for providing rooms distinct from the church for holding vestry meetings and appointing vestry clerks. Vestry meetings are convened by notice in writing, stating the time and place of holding the same and the special purpose thereof, signed by a churchwarden, the incumbent, curate, or an overseer of the parish, and affixed on or near to the principal door of each church or chapel in the parish previously to the commencement of divine service (58 Geo. 3, c. 69, s. 1, amended by 1 Vict. c. 45, ss. 1, 2, 3). The incumbent of the parish presides by right, if present (*Wilson v. M'Math*, 3 Phillim. 67); if absent, a chairman may be elected by the meeting, who shall have a casting vote (58 Geo. 3, c. 69, s. 2). Every inhabitant or person occupying land within the parish rated to the poor at any amount under 50*l.* is entitled to one vote, and all persons rated at 50*l.* or upwards are entitled to a vote for every 25*l.* value. No person, however, shall be entitled to more than six votes. Joint property may be represented by one of the owners, if but one present, in respect of the whole of the joint charge (*Ibid.* s. 3, and 59 Geo. 3, c. 85, s. 1). New inhabitants may vote in respect of property for which they are liable to be rated (58 Geo. 3, c. 69, s. 4); but no person is entitled to vote who shall not have paid the last poor rate actually charged upon him (*Ibid.* s. 5, explained by 59 Geo. 3, c. 85, s. 3), if such rate shall have been made or become due three calendar months or more immediately preceding such vestry meeting (16 & 17 Vict. c. 65, s. 1). A clerk or agent may

the vestry, for the special purpose of determining whether a burial ground shall be provided under this act for the parish (a); and public notice of such

vote for a corporation or company (59 Geo. 3, c. 85, s. 2). The votes of parishioners in vestry are to be taken by show of hands or by poll. A poll is demandable as of right, and, if demanded, should, in the absence of other business, be taken immediately; but if, from the number present, time does not allow of this, the chairman may, on his own authority, adjourn the meeting for the purpose, so as to give all persons entitled a reasonable opportunity of voting (*R. v. D'Oyley*, 4 P. & D. 58; 12 Ad. & Ell. 139). And where due notice has been given that, in the event of a poll being demanded, the meeting will be adjourned to another building to take the same, the chairman may adjourn for the purpose (*Baker v. Wood*, 1 Curteis, 507; *R. v. Archdeacon of Chester*, 1 Ad. & Ell. 342), but he cannot adjourn against the wishes of the majority, no such notice having been given, so as to disturb the regular order of the proceedings, the general right of adjournment being in the meeting (*Stoughton v. Reynolds*, 2 Stra. 1045). If an amendment be carried by show of hands, and lost on a poll, the original motion is not therefore carried, but should be also put to the meeting, and a show of hands taken upon it, when the poll may be taken on each question, for and against, at the same time (*Elt v. The Burial Board of Islington*, 1 Kay, 449). A vote taken after misstatement of an important point is void, and must be taken over again (*Re Egham Burial Board*, 3 Jur., N. S. 956). The chairman shall sign the proceedings. On refusal to grant a poll, he may be compelled by mandamus. A rule made by one vestry for the regulation of its proceedings is not binding on a succeeding one; nor is the confirmation of a succeeding vestry necessary to make the legal acts of a preceding one valid; and in the case of *Mawley v. Barbet*, 2 Esp. N. P. 687, it was held that a vestry had no power to rescind an appointment of churchwardens made at the preceding vestry. The statutes for regulating vestries have not taken away the common law right of voting by a poll (*R. v. St. Mary, Newington*, 17 L. J. N. S. 220; *Campbell v. Maund*, 5 Ad. & Ell. 865). As to select vestries, see 59 Geo. 3, c. 12, and 1 & 2 Will. 4, c. 60; and see 15 & 16 Vict. c. 85, s. 52, p. 44, *post*, as to the meaning of the term "vestry" under the Burial acts; also Appendix, *Reg. v. Peters*, and *Reg. v. Gladstone*, p. 219.

(a) See Appendix, Form 1, p. 261. In the case of the appointment of a board under this section for a parish consisting of several townships separately maintaining their own poor, there is no power of apportioning the expenses. They must proceed under 18 & 19 Vict. c. 128, s. 11, and 20 & 21 Vict. c. 81, s. 9 (*Reg. v. Wright*, see Appendix, p. 225). A board appointed for part of a parish, exclusive of such a district as is provided for by 18 & 19 Vict. c. 128, s. 12, held to be well constituted (*Viner v. Tunbridge*, see Appendix, p. 222).

vestry meeting, and the place and hour of holding the same, and the special purpose thereof, shall be given in the usual manner in which notices of the meetings of the vestry are given, at least seven days before holding such vestry meeting (*a*) ; and if it be resolved by the vestry that a burial ground shall be provided under this act for the parish (*b*), a copy of such resolution, extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of her Majesty's principal secretaries of state (*c*).—15 & 16 Vict. c. 85, s. 10.

The churchwardens or other persons to whom it belongs to convene meetings of the vestry of any parish in which no burial board has been appointed, may at any time, at their discretion, without requisition of ratepayers for that purpose, convene a meeting of such vestry for the purpose of determining whether a burial ground shall be provided for the parish ; and where any order in council has been made before the passing of this act for discontinuing burials (wholly or subject to any exception or qualification) in any burial ground of any parish for which no burial board has been appointed, or notice has been given of the intention of the secretary of state to make a representation to her Majesty in council that burials should be discontinued (wholly or subject to any exception or qualification) in any burial ground of any parish, the churchwardens

(*a*) See Appendix, Form 2, p. 261.

(*b*) See Appendix, Form 3, p. 262. In the case of *Reg. v. Overseers of Walcot* (see Appendix, p. 234), it was held that the appointment of a burial board for an entire common law parish, consisting of several ecclesiastical districts, was good.

(*c*) See Appendix, Form 4, p. 263.

or other persons to whom it belongs to convene meetings of vestry shall, with all convenient speed, after the passing of this act, convene a meeting of the vestry for the purpose aforesaid ; and where at any time hereafter notice is given of the intention of the secretary of state to make a like representation in relation to a burial ground of any parish, such churchwardens or other persons as aforesaid shall forthwith convene a meeting of the vestry for the purpose aforesaid ; and all the provisions of the said acts as amended by this act relating to and consequent upon vestry meetings convened upon such requisition as provided by the first recited act shall be applicable to vestry meetings convened under this enactment.—18 & 19 Viet. c. 128, s. 3.

In case of such resolution as aforesaid the vestry shall appoint not less than three nor more than nine persons, being ratepayers of the parish, to be the burial board of such parish (*a*), of whom one-third, or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly at such time as shall be from time to time fixed by the vestry, but shall be eligible for immediate re-appointment : Provided always, that the incumbent of the parish shall be eligible to be appointed and re-appointed from time to time as one of the members of the said board, although not a ratepayer of the parish (*b*) : provided also, that any member of the board may at any time resign his office, on giving notice in writing to the

(*a*) In boroughs, the town council may become the burial board (see 17 & 18 Vict. c. 87, Appendix, p. 153).

(*b*) It will be observed that the incumbent is not *ex officio* a member of the board, but that no further qualification is required for his election.

churchwardens or persons to whom it belongs to convene meetings of the vestry.—15 & 16 Vict. c. 85, s. 11.

Where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry (*a*) for purposes common to such several parishes or places, it shall be lawful for the vestry or any meeting in the nature of a vestry of such several parishes or places in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, to appoint a burial board, and from time to time supply vacancies therein, and to exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers as under the said acts and this act are vested in the vestry of a parish or place separately maintaining its own poor; and the burial board so appointed shall have all the powers for providing a burial ground for the common use of such several parishes or places, and for facilitating interments, and otherwise, as if such several parishes or places had been a parish separately maintaining its own poor; and the expenses of the burial board appointed under this provision shall be borne by the several

(*a*) A burial board for a parish and hamlet united, and meeting in one vestry for ecclesiastical purposes, and having one church and burial ground, but separately maintaining their own poor, and having separate vestries for parochial purposes, was well constituted under this section (*Reg. v. Overseers of Coleshill*, see Appendix, p. 243).

parishes or places for which such board is appointed, and shall be apportioned among them by such burial board in proportion to the value of the property in such several parishes or places as rated to the relief of the poor; and the sums required by the burial board in respect of the portion of such expenses to be borne by any such parish or place shall be paid out of the rates for the relief of the poor in such parish or place, in like manner as if such burial board had been appointed for such parish or place alone.—18 & 19 Vict. c. 128, s. 11.

Where any of the several parishes or places under the circumstances provided for in the said enactment separately maintains its own poor, or has a separate burial ground, it shall not be lawful for the vestry, or meeting in the nature of a vestry, of such several parishes or places, to appoint a burial board under the said enactment without the approval of one of her Majesty's principal secretaries of state (*a*); and in case it appear to the secretary of state that any such parish or place has a sufficient burial ground, or that otherwise it would not be expedient that the powers given by the said enactment should be exercised in relation to such parish or place, the secretary of state may direct that such parish or place shall be excepted from the operation of the said enactment, and thereupon the same shall be excepted accordingly; and the inhabitants of the remaining parish or parishes, place or places, may assemble in vestry, or in a meeting in the nature of a vestry, from time to time, and in such vestry or meeting may proceed in like manner under

(*a*) Previously given, 34 & 35 Vict. c. 33, s. 1, p. 188.

the said acts and this act in all respects as if the inhabitants of such last-mentioned parish or parishes, place or places, exclusively had a vestry for their common purposes, and were wholly unconnected with the parish or place so excepted.—20 & 21 Vict. c. 81, (part of) s. 9.

Where any parish or place has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, it shall not be lawful for the vestry or meeting in the nature of a vestry for such entire parish or place to appoint a burial board without the approval of one of her Majesty's principal secretaries of state (*a*).—23 & 24 Vict. c. 64, s. 4.

The vestry, or meeting in the nature of a vestry, of any parish, township, or other district not separately maintaining its own poor, which has heretofore had a separate burial ground, may appoint a burial board (*b*), and from time to time supply vacancies therein, and may exercise the same powers of authorisation, approval, and sanction in relation to such burial ground, and such other powers as under the said acts and this act are vested in the vestry of a parish separately maintaining its own poor; and the burial boards so appointed shall have all the powers for providing a burial ground and otherwise as if such parish, township, or other district had been a parish separately maintaining its own poor.—18 & 19 Vict. c. 128, s. 12.

The vestry, or meeting in the nature of a vestry, of any parish, township, or other district not separately

(*a*) Previously given, 34 & 35 Vict. c. 33, s. 1, p. 188.

(*b*) See note (*a*), p. 35.

maintaining its own poor, and which has had no separate burial ground, may appoint a burial board (*a*); and such vestry or meeting, and the burial board appointed by it, shall exercise and have all the powers which they might have exercised and had under the said acts and this act if such parish, township, or district had had a separate burial ground before the passing of the said act of the eighteenth and nineteenth years of her Majesty: provided always, that all the powers of any other vestry or meeting and burial board, if any, shall then cease and determine (*b*), so far as relates to such parish, new parish, township, or district as aforesaid. —20 & 21 Vict. c. 81 (part of) s. 5.

The vestries of any parishes which shall have respectively resolved to provide burial grounds under this act may concur in providing one burial ground for the common use of such parishes, in such manner, not inconsistent with the provisions of this act, as they shall mutually agree, and may agree as to the proportions in which the expenses of such burial ground shall be borne by such parishes, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the monies to be raised for the relief of the poor of the same respective parish accordingly (*c*); and, according and subject to the terms

(*a*) Such a board held to be well constituted, *Reg. v. Overseers of Walcot St. Swithin*, see Appendix, p. 241.

(*b*) In the above case a doubt was expressed whether in the event of the appointment of a board under this section subsequent to the constitution of a board for the entire parish, the powers of such original board would not be kept alive with reference to the general liability that attaches to the whole rates of the parish (see Appendix, p. 242).

(*c*) In boroughs a separate rate may be made (20 & 21 Vict.

which shall have been so agreed on, the burial boards appointed for such parishes respectively shall, for the purpose of providing and managing such one burial ground, and taking and holding land for the same, act as one joint burial board for all such parishes, and may have a joint office, clerk, and officers, and all the provisions of this act shall apply to such joint burial board accordingly ; and the accounts and vouchers of such board shall be examined and reported on by the auditors of each of such parishes ; and the surplus money at the disposal as aforesaid of such board shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses.—15 & 16 Vict. c. 85, s. 23.

All acts authorised to be done by any burial board, with the approval, sanction, or authority of the vestry or vestries of the parish or parishes for which such board is constituted, may, where a joint burial board is constituted for more than two parishes, be done with the approval, sanction, or authority (as the case may require) of the vestries of the majority of such parishes.—20 & 21 Vict. c. 81, s. 1.

Where the vestries of two or more parishes have agreed to provide one burial ground for the common use of such parishes, such vestries may, at any time before such burial ground has been provided, determine the union between such parishes under such

c. 81, s. 22, p. 180). Local boards of health, or improvement commissioners acting as burial boards, may also make a separate rate (23 & 24 Vict. c. 64, ss. 1 and 2, p. 185).

agreement (a), and upon such union being so determined all the provisions of the said acts and this act shall be applicable with regard to such parishes and the respective burial boards thereof as if such union had not been formed, save that any expenses already properly incurred by the joint burial board for such parishes shall be defrayed as provided by the said acts.—20 & 21 Vict. c. 81, s. 2.

“Parish” shall mean (b) every place having separate overseers of the poor, and separately maintaining its own poor.—15 & 16 Vict. c. 85, s. 52.

No resolution or proceeding of any vestry, or meeting in the nature of a vestry, for the purposes of the said recited acts and this act, or any of them, shall be void or voidable by reason of any defect or irregularity of or in notice of such vestry or meeting, or any other error in form in the calling of such vestry or meeting, or in the proceedings thereat, unless notice in writing of such defect or irregularity or error shall have been given at such vestry or meeting, or within seven days after the day of the holding thereof, to the churchwardens or other persons to whom it belongs to call meetings of such vestry, or such meeting in the nature of a vestry, who shall thereupon call another meeting for the purpose of considering the previous resolution or proceeding or the matter thereof; and no such resolution and proceeding made or taken at any such

(a) It is presumed that the consent of both, or all the vestries will be necessary to determine such union.

(b) *i.e.*, shall include or extend to all such places, but not exclude such parishes as do not separately maintain their own poor (see *Reg. v. Sudbury Burial Board*, Appendix, p. 221; see also *Hornby v. Toxteth Park*, p. 227).

vestry, or meeting in the nature of a vestry, before the passing of this act, which shall not have been objected to by notice in writing to such churchwardens or persons as aforesaid, shall be deemed invalid by reason of any such defect, irregularity, or error.—20 & 21 Viet. c. 81, s. 27.

“Churchwardens” shall mean also chapelwardens, or other persons discharging the duties of churchwardens: “vestry” shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select or other vestry elected under an act of the fifty-ninth year of King George the Third, chapter twelve, “to amend the Laws for the Relief of the Poor,” or elected under an act passed in the second year of King William the Fourth, chapter sixty, “for the better Regulation of Vestries, and for the appointment of Auditors of Accounts, in certain parishes of England and Wales,” or elected under the provisions of any local act of parliament for the government of any parish by vestries, in which parishes it shall mean such select or other vestry (*a*).—15 & 16 Vict. c. 85 (part of), s. 52.

Nothing in this act contained shall in anywise abridge, lessen, or defeat any power, right, or privilege of any local board of health being the burial board of a borough created or to exist under or by virtue of any local act of parliament (*b*).—18 & 19 Viet. c. 128, s. 19.

(*a*) Vide *ante*, p. 34, note, and cases *Reg. v. Peters*, and *Reg. v. Gladstone*, Appendix, p. 219.

(*b*) Local boards of health may provide reception houses for the dead, and make bye-laws with respect to the management of the

Any local board of health acting as or created a board under or by virtue of the powers of any local act of parliament shall and may have and exercise all the powers, rights, and privileges which by this act or by the secondly recited act are or can or may be had, enjoyed, or exercised by any burial board therein named.—18 & 19 Vict. c. 128, s. 20 (*a*).

In case it appear to her Majesty in council, upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the rate-payers, and acting under or by virtue of the powers of any local act of parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is

saue, and, on application, make arrangements for interment of any corpse received therein (11 & 12 Vict. c. 63, s. 81). Interment in any burial ground within the district of any local board, if dangerous to health, may, on certificate of the general board, be prohibited under penalty of 20*l.* (s. 82); and no interment shall take place under any new place of worship in any district to which the Public Health Act has been applied, nor no new burial ground not previously authorised by parliament formed therein, without consent of the general board, under penalty of 50*l.*, recoverable by any person in action of debt (s. 83). But these provisions are practically superseded by the 18 & 19 Vict. c. 128, s. 20, so far as relates to the local boards therein mentioned; and the consent of the secretary of state is [by 24 & 25 Vict. c. 61, s. 14] now substituted in all cases in which the consent of the general board was required under the Public Health Act, 1848. The Local Government Act, 21 & 22 Vict. c. 98, s. 49, contains certain provisions purporting to allow a local board to act as a burial board for part of its district; but the section is practically inoperative. See Appendix, p. 185, n., for this section. See also 24 & 25 Vict. c. 61, s. 21 (p. 186, n.), as to repair and regulation of burial grounds by local boards being burial boards.

(*a*) Town councils in boroughs may become burial boards (see Appendix, 17 & 18 Vict. c. 87, p. 153). “Borough” shall include city, &c. (20 & 21 Vict. c. 81, s. 29, p. 183).

co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial grounds within the said district, it shall be lawful for her Majesty, with the advice of her privy council, in case her Majesty see fit so to do, to order that such local board shall be a burial board for the district of such local board, or that such commissioners shall be a burial board for the district of such commissioners, and thereupon such local board or such commissioners, as the case may be, shall be a burial board for such district accordingly; and the powers and provisions of the acts hereinbefore mentioned (except the provisions relating to the constitution or appointment and resignation of members of burial boards), and the provisions herein contained, shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead previously to interment which may be provided by such board or by such commissioners, in like manner as to any parish or parishes and the burial ground thereof, and any burial ground and any such places as aforesaid provided by such last-mentioned board; save that no approval, sanction, or authorisation of any vestry shall be requisite (a): Provided always, that notice of

(a) A separate rate for burial purposes may be made by local boards of health or improvement commissioners acting as burial boards under 23 & 24 Vict. c. 64, for which, see Appendix, p. 184; and by 25 & 26 Vict. c. 100, such improvement commissioners

such petition, and of the time when it shall please her Majesty to order the same to be taken into consideration by the privy council, shall be published in the *London Gazette*, and in one of the newspapers usually circulating in the district of such local board or of such commissioners, one month at least before such petition is so considered: provided also, that this enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning of the Public Health Act, 1848.—20 & 21 Vict. c. 81, s. 4.

Any vacancies in the board may be filled up by the vestry when and as the vestry shall think fit.—15 & 16 Vict. c. 85, s. 12.

Every vacancy in any burial board shall be filled up by the vestry appointing the same within one month after such vacancy shall have happened (a), and immediately on the occurrence thereof the same shall be notified by the burial board to the churchwardens or other persons to whom it belongs to convene meetings of the vestry; and in case any such vestry shall neglect to fill up any such vacancy, the vacancy may be filled up by the burial board at any meeting thereof; and every person to be appointed to supply any such vacancy shall be a ratepayer of the parish for which

are empowered to borrow money on mortgage of such burial rate (see Appendix, p. 187). When the district of a burial board is continuous with that of a Local Board of Health, they may by resolution of Vestry, and by agreement, transfer all their estate, powers, duties, &c., to such Local Board (29 & 30 Vict. c. 90, s. 44).

(a) The conviction for felony of any member of a burial board will vacate his office (33 & 34 Vict. c. 23, s. 2.)

the burial board is appointed ; and every such board may act for any purpose, notwithstanding any vacancies therein.—18 & 19 Vict. c. 128, s. 4.

PROCEEDINGS OF BURIAL BOARDS.

The board shall meet (*a*) at their office, or some other convenient place previously publicly notified, and the said board may meet at such other time as at any previous meetings shall be determined upon ; and it shall be at all times competent for any two members of the board, by writing under their hands, to summon, with at least forty-eight hours notice, the board for any special purpose mentioned in such writing (*b*), and to meet at such time as shall be appointed therein.—15 & 16 Vict. c. 85, s. 13.

At all meetings of the board any number not less than three members of such board shall be a sufficient number for transacting business, and for exercising all the powers of the board.—15 & 16 Vict. c. 85, s. 14.

The board shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for the business of the board and for the purposes of their burial ground, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business.—15 & 16 Vict. c. 85, s. 15.

(*a*) Originally "at least once in every month," repealed by 18 & 19 Vict. c. 128, s. 5, p. 163.

(*b*) See Appendix, Form 5, p. 263.

Entries of all proceedings of the board, with the names of the members who attend each meeting, shall be made in books to be provided and kept for that purpose, under the direction of the board, and shall be signed by the members present or any two of them ; and all entries purporting to be so signed shall be received as evidence, without proof of any meeting of the board having been duly convened or held, or of the presence at any such meeting of the persons named in any such entry as being present thereat, or of such persons being members of the board, or of the signature of any person by whom any such entry purports to be signed, all which matters shall be presumed until the contrary be proved ; and the board shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money are paid and such liabilities incurred.—15 & 16 Viet. c. 85, s. 16.

All such books shall at all reasonable times be open to the examination of every member of such board, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same ; and in case the members of such board, or any of them, or any of the officers or servants of such board having the custody of the said books, being thereunto reasonably requested, refuse to permit or do not permit any churchwarden, overseer,

or ratepayer to examine the same, or take any such copies or extracts, every such member, officer, or servant so offending shall for every such offence, upon a summary conviction thereof before any justice of the peace, forfeit any sum not exceeding five pounds (*a*).—15 & 16 Vict. c. 85, s. 17.

The vestry shall yearly appoint two persons, not being members of the board, to be auditors of the accounts of the board (*b*), and at such time in the month of *March* in every year as the vestry shall appoint the board shall produce to the auditors their accounts, with sufficient vouchers for all monies received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry.—15 & 16 Vict. c. 85, s. 18.

The expenses incurred or to be incurred by the burial board of any parish in carrying this act into execution shall be chargeable upon and paid out of the rates for the relief of the poor of such parish (*c*), the expenses to be so incurred for or on account of any parish in providing and laying out a burial ground under this act and building the necessary chapel or chapels thereon not to exceed such sum as the vestry shall authorise to be expended for such purpose; and the overseers or other officers authorised to make and

(*a*) For recovery of penalty, see note (*b*), p. 25.

(*b*) By 23 & 24 Vict. c. 64, s. 3, local boards of health and improvement commissioners, constituted burial boards, are to keep distinct accounts, which, however, shall be audited in the same manner as their other accounts. See Appendix, p. 187.

(*c*) In boroughs, from the borough fund, 17 & 18 Vict. c. 87, s. 3, or a separate rate may be made, 20 & 21 Vict. c. 81, s. 22. Local boards of health, or improvement commissioners acting as burial boards, by virtue of an Order in Council, may also make a separate burial rate, 23 & 24 Vict. c. 64, s. 1.

levy rates for the relief of the poor in any parish shall, upon receipt of a certificate under the hands (a) of such number of members of the burial board as are authorised to exercise the powers of the board of the sums required from time to time for defraying any such expenses as aforesaid, pay such sums out of the rates for the relief of the poor as the board shall direct.—15 & 16 Vict. c. 85, s. 19.

Where any district (whether a parish or township or other subdivision) not separately maintaining its own poor, but forming part of a parish maintaining its own poor, or of an incorporation or other union maintaining the poor of the places comprised therein, by means of a common rate, shall have a burial board, or shall form part of a place or union of places not co-extensive with the area rated for the relief of the poor, and having one burial board, it shall be lawful for such respective burial board to issue their certificate to the overseers of such parish, or the overseers or other persons authorised to make and collect or cause to be collected such common rate (as the case may be), for payment of the sums required for the expenses of such burial board, or, where such district not separately maintaining its own poor forms part only of the area of the burial board, of the sums required in respect of the portion of such expenses to be borne by such district, in like manner as if such district had been a parish separately maintaining its own poor, and such overseers or persons authorised as aforesaid had been the overseers thereof; and such overseers or persons

(a) See Appendix, Form 6, p. 263.

shall pay such sums as shall be required by such certificate, according to the directions of such burial board, and shall levy such sums as may be required for such payments to the burial board by an addition to the parish rate or common rate, so far as the same affects the district in respect of which such payments are required, or by separate rates to be made from time to time on such district ; and for levying such additions or separate rates as aforesaid such overseers or other persons shall have the powers, remedies, and privileges, and proceed in the same manner, as in the case of the rates for the relief of the poor ; provided that any such rates may (notwithstanding any restriction in relation to the parish rate or common rate) be made and levied at such times as may be necessary to provide for the payments aforesaid.—18 & 19 Vict. c. 128, s. 13.

“Overseers” shall mean also any persons authorised and required to make and collect, or cause to be collected, the rate for the relief of the poor of the parish, and acting instead of overseers of the poor.—15 & 16 Vict. c. 85 (part of), s. 52.

If the vestry of any parish shall refuse or neglect to authorise the expenditure of such sums as the burial board of such parish shall have declared to be necessary for providing and laying out a burial ground, and building the necessary chapel or chapels therein, it shall be lawful for such burial board to represent such refusal or neglect to one of her Majesty's principal secretaries of state ; and in case it shall appear to the secretary of state, after inquiry into the circumstances of the case, that the burial board are unable

to provide such burial ground, or to proceed effectually in the execution of their duties, by reason of such refusal or neglect, it shall be lawful for such secretary of state, by warrant under his hand, to authorise such burial board, without further authority, sanction, or approval of or by such vestry, to expend such sums of money for providing and laying out a burial ground, and building the necessary chapel or chapels thereon, and to borrow and charge such money for all or any of such purposes, and to enter into and make such contracts and purchases, and do such other acts as under the sections nineteen, twenty, twenty-six, and forty-two of the said Act of the fifteenth and sixteenth years of her Majesty might have been expended, borrowed, and charged, entered into, made, and done with the authority, approval, and sanction of such vestry, subject, nevertheless, to such limitation of amount or other limitation or restriction as such secretary of state may by his warrant prescribe; and all acts done in pursuance of such warrant shall be as valid and effectual as if the authority, approval, and sanction of such vestry had in every case been obtained.—18 & 19 Vict. c. 128, s. 6.

Provided always, that it shall be lawful for the board, with the sanction of the vestry and the approval of the commissioners of her Majesty's treasury (*a*), to borrow any money required for providing and laying out any burial ground under this act, and building a chapel or chapels thereon, or any of such

(*a*) Application for permission to borrow money should be addressed to the Lords of the Treasury, Whitehall.

purposes, and to charge the future poor rates of the parish with the payment of such money and interest thereon (*a*).—15 & 16 Vict. c. 85, s. 20.

The commissioners for carrying into execution an act of the session holden in the fourteenth and fifteenth years of her Majesty, chapter twenty-three, “to authorise for a further Period the Advance of Money out of the Consolidated Fund to a limited Amount for carrying on Public Works and Fisheries and Employment of the Poor,” and any act or acts amending or continuing the same, may from time to time make to the burial board of any parish for the purposes of this act any loan under the provisions of the recited act, or the several acts therein recited or referred to, upon security of the rates for the relief of the poor of the parish (*b*).—15 & 16 Vict. c. 85, s. 21.

•(*a*) See Appendix, Form 7, p. 264. The like borrowing power is conferred on improvement commissioners constituted burial boards by 25 & 26 Vict. c. 100, s. 1.

(*b*) By the Public Works’ Loan Acts passed from time to time certain specified sums are placed at the disposal of the Commissioners, to be charged upon the Consolidated Fund, for the purposes of making such advances for public works, and for such periods as they may from time to time be authorised to make, bearing interest at 5*l.* per cent. (7 Geo. 4, c. 30, s. 2); and, with the previous consent of the Treasury, loans may be granted at a lower rate of interest, but not less than 3½ per cent. (16 & 17 Vict. c. 40, s. 3); this, however, is not acted on except under very special circumstances. On application at the Public Works Loan Office, South Sea House, Threadneedle-street, any burial board may obtain a loan on the terms and security authorised by 15 & 16 Vict. c. 85, and prescribed by the commissioners, who require all monies advanced by them to be repaid by annual instalments within twenty years; and by 16 & 17 Vict. c. 40, s. 2, it is enacted that in all cases where loans shall be made by the Public Works Loan Commissioners they shall (notwithstanding any other act passed or to be passed to the contrary) be made in accordance with the provisions of the Public Works Loan Acts; and the securities for the same shall have such priorities as if they had been made under the said acts except as altered by express reference to this act. These loans, however, may be paid off at any time without notice.

The clauses of the Commissioners Clauses Act, 1847, with respect to mortgages to be executed by the commissioners, shall be incorporated with this act, and shall apply to mortgages and other securities to be executed by burial boards; and for the purposes of this act the expression "the commissioners" where used in the said clauses shall mean the burial board acting in the execution of the said clauses and the acts hereinbefore recited or this act (*a*).—20 & 21 Vict. c. 81, s. 19.

(*a*) The powers conferred by the Commissioners Clauses Act (10 Vict. c. 16) may be extended to such commissioners as are constituted by any "special act," with which any of its clauses may be incorporated, to be construed as if such clauses were set forth therein with reference to the matter to which such act relates (ss. 1, 5). With respect to mortgages on security of rates, they shall be by deed duly stamped, and be under seal of the commissioners, (*i.e.*, Burial Board, *vide supra*) (s. 75). A register, in which entries shall be made within fourteen days of date, shall be kept by the clerk, and be open to inspection without fee (s. 76); mortgages may be transferred (s. 77); transfers to be registered within thirty days on payment of fee of five shillings; except to whom mortgage be last transferred, no person shall have power to discharge same (s. 78); interest to be paid half-yearly unless otherwise provided (s. 79); money may be borrowed at a lower rate of interest to pay off mortgages at higher rate (s. 80); time of repayment (at the office of the commissioners) may be inserted in the deed (s. 81); if no time fixed, payment may be demanded after expiration of twelve months on giving six months notice; in like manner, commissioners may pay off mortgage on giving like notice (s. 82); interest to cease after expiration of notice unless default be made by commissioners (s. 83), who shall set apart annually out of the rates the prescribed part as a sinking fund to be invested in Government securities until sufficient to pay off mortgage (s. 84); if more than one mortgage, commissioners shall decide by lot the order in which such shall be paid off after six months notice, signed by their clerk, to the mortgagee (s. 85); books of commissioners shall be open at all seasonable times to inspection of mortgagees, with liberty to take extracts (s. 88). For these clauses at length, see Appendix, p. 121.

It will be seen that the material effect of this incorporating section is that mortgages and transfers are in future to be registered, and that the registered owner alone will be able to discharge

Provided always, that for the purpose of providing a sinking fund for paying off the principal money borrowed on mortgages granted under any of the said acts or this act, the burial board shall once in every year set aside, out of the monies charged by such mortgages, such sum as they think proper, being a sum equal to or exceeding one fiftieth part of the principal money so borrowed.—20 & 21 Vict. c. 81, s. 20.

Any burial board or council of a borough may, for the purpose of raising money, instead of making mortgages under any of the said acts, grant terminable annuities for a life or lives, or for any number of years not exceeding thirty years, to be paid out of the like monies as provided with regard to the monies secured by such mortgages.—20 & 21 Vict. c. 81, s. 21.

The money raised for defraying such expenses, and the income arising from the burial ground provided for the parish, except fees payable to the incumbent, clerk, and sexton of the parish, and the other fees herein directed to be otherwise paid, shall be applied by the board in or towards defraying the expenses of such board under this act; and whenever, after repayment of all monies borrowed for the purposes of this act in or for any parish and the interest thereof, and after satisfying all the liabilities of the board with reference to the execution of this act in or for the parish, and providing such a balance as shall be

the mortgage. All mortgages already granted should be entered so as to make the register as complete as possible.

deemed by the board sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the board, they shall pay the same to the overseers, in aid of the rate for the relief of the poor of the parish (*a*).—15 & 16 Vict. c. 85, s. 22.

“Incumbent” and “minister” shall, in respect of any fee made payable to an incumbent or minister under this act, mean the clergyman who would have been entitled to the fee had the body been buried in the churchyard or burial ground of the parish from which it came, or in the burial ground of the ecclesiastical district in case such district has a burial ground at the passing of this act (*b*), and if any difference shall arise between two or more persons severally claiming to be the incumbent or minister under this provision, such difference shall be determined by the

(*a*) In the case of local boards of health or improvement commissioners constituted burial boards, any such surplus will be applied in aid of the general district rate or improvement rate (23 & 24 Vict. c. 64, s. 3, p. 187).

Although the payment of any surplus profits in aid of the poor rate may at first sight seem to render a low charge for funerals undesirable, it may be remarked, with reference to the lowest class, at least, that the higher the charge the more numerous will be the applications for parochial assistance, whilst it is by no means prudent to encourage such applications, because persons who have once received parochial relief in any shape will in all probability come again on other grounds. It has been said of individuals of this class,—“Once a pauper, always a pauper.” It would seem, therefore, desirable that burials for the poor should be undertaken generally at a loss, rather than that part of the charge should be defrayed under the head of parochial relief in more numerous instances.

(*b*) See Note, p. 75.

bishop of the diocese.—15 & 16 Vict. c. 85 (part of), s. 52.

For the more easy execution of the purposes of this act, the burial board of every parish appointed under this act shall be a body corporate, by the name of “The Burial Board for the Parish of _____, in the county of _____,” and by that name shall have perpetual succession and a common seal (*a*). and shall sue and be sued, and have power and authority (without any licence in mortmain) to take, purchase, and hold land for the purposes of this act; and where the burial boards of two or more parishes act as and form one joint burial board for all such parishes for the purposes aforesaid, such joint board shall for such purposes only be a body corporate by the name of “The Burial Board for the parishes of _____ and _____, in the county of _____,” and by that name shall have perpetual succession and a common seal, and shall sue and be sued, and have power and authority as aforesaid to take, purchase, and hold land for the purposes of this act.—15 & 16 Vict. c. 85, s. 24.

PROVISION OF NEW GROUNDS.

Every burial board shall, with all convenient speed, proceed to provide a burial ground for the parish or parishes for which they are appointed to act, and to make arrangements for facilitating interments therein (*b*); and in providing such burial ground the board

(*a*) Persons forging and counterfeiting seal, guilty of felony, 20 & 21 Vict. c. 81, s. 15, p. 179.

(*b*) See Appendix, Suggestions for providing New Grounds, p. 293.

shall have reference to the convenience of access thereto from the parish or parishes for which the same is provided ; and any such burial ground may be provided either within or without the limits of the parish, or all or any of the parishes, for which the same is provided.—15 & 16 Vict. c. 85 (part of), s. 25.

But no ground not already used as or appropriated for a cemetery shall be used for burials under the said act or this act, or either of them, within the distance of one (*a*) hundred yards from any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house.—18 & 19 Vict. c. 128 (part of), s. 9.

Provided always, that in all cases in which any burial board shall provide a new burial ground under the said act of the last session of parliament or under this act, that new burial ground shall be divided into consecrated (*b*) and unconsecrated parts, in such proportions, and the unconsecrated part thereof shall be allotted in such manner and in such portions as may be sanctioned by one of her Majesty's principal secretaries of state.—16 & 17 Vict. c. 134 (part of), s. 7.

If the ratepayers assembled at any vestry duly convened under the provisions of this act shall, in pursuance of public notice duly given in that behalf, resolve unanimously that any new burial ground to be provided for their parish, under the provisions of

(*a*) Originally "two;" see 15 & 16 Vict. c. 85, s. 25, p. 135 ; amended by 17 & 18 Vict. c. 87, s. 12, p. 157.

(*b*) The Archbishops and Lord Chancellor may with consent of the Privy Council, fix a table of fees to be paid on the consecration of burial grounds, 30 & 31 Vict. c. 135.

this act, shall be held and used in like manner and subject to the same laws and regulations in all respects as the existing burial ground or churchyard of the said parish, the land for such new burial ground may be conveyed and settled in accordance with such resolution, anything in this or the said recited acts notwithstanding (*a*), and in such case it shall not be necessary to set apart to remain unconsecrated any portion of the land so conveyed and settled : Provided always, that if at any time within ten years thereafter the vestry, duly convened under the provisions of this act in pursuance of public notice duly given in that behalf, should determine that an unconsecrated burial ground should be also provided for such parish, all the powers and provisions of the said recited acts and this act may be put in force and shall be applicable for providing such unconsecrated burial ground separately, in like manner as they might have been put in force and been applicable for providing an ordinary burial ground for such parish.—18 & 19 Vict. c. 128, s. 10.

Any burial board may, if they see fit, with the approval of one of her Majesty's principal secretaries of state, provide more than one burial ground, and

(*a*) See Form 13, p. 268. The intention of this section appears to be to enable small parishes, in which there happen to be no Dissenters who make a point of unconsecrated ground being provided, simply to have a second churchyard, or an addition made to the existing churchyard under the powers of the act, without incurring further expenses; and it is apprehended that after such new ground has been provided and vested in the incumbent, the duties of the burial board will be in abeyance, except for the purpose of authorising any rate which may from time to time be required in paying off incumbrances.

may, if they see fit, with such approval, instead of setting apart a portion of any burial ground for the purpose of such portion being used as unconsecrated ground, provide separate and distinct grounds to be used respectively as consecrated and unconsecrated burial grounds : where before the passing of this act any burial board has provided more than one burial ground, or has (instead of setting apart a portion of any burial ground for the purpose of being used as unconsecrated ground) provided separate and distinct grounds as consecrated and unconsecrated burial grounds, such burial board shall be deemed to have acted lawfully and in accordance with the said acts.—
20 & 21 Vict. c. 81, s. 3.

Where a burial ground has been provided for any parish under any of the acts commonly referred to or known as the Church Building Acts, and the same has been consecrated, and any money expended in providing such burial ground has been borrowed on the security of the church rates, it shall be lawful for the incumbent of the parish, with the consent of the ordinary and the burial board of such parish, or of any borough or district in which such parish is wholly or in part comprised, by instrument in writing under the hands and seals of such incumbent and ordinary, and under the seal of the said burial board, to declare that, in consideration of the payment of the debt by the said burial board, or of such sum as shall be mutually agreed upon, with the consent of the persons signified in writing under their hands, to whom two-thirds of such debt is due, the said burial ground

shall be vested in and be under the care and management of such burial board, and thereupon the same shall be vested in and be under the care and management of such board, and shall be subject to the provisions of the hereinbefore recited acts and this act applicable to a consecrated burial ground or the consecrated part of any burial ground provided by any burial board, and any money borrowed as aforesaid, and remaining owing, and the interest due and to become due thereon, and all costs and expenses occasioned by the nonpayment thereof, or incurred in providing such burial ground, and then remaining unpaid, shall be charged on and paid out of such rates or fund as under the said last-mentioned acts and this act would be chargeable with the expense of providing a burial ground by such board, and such declaration as aforesaid shall be registered in the registry of the diocese; and such board may, with the approval of the vestry, enlarge such burial ground, by the addition of ground to be used for burials otherwise than according to the rites of the Church of England, and to be used subject to the provisions of the acts herein recited and of this act in respect to the unconsecrated portions of burial grounds.—20 & 21 Vict. c. 81, s. 7.

Where any cemetery in which burials have, by order in council, under the hereinbefore recited acts or any of them, been ordered to be discontinued, is adjoining or near to any land appropriated or about to be appropriated by any burial board for the purposes of a burial ground, and appears to such board eligible

for the purpose of appropriating or erecting buildings for or making approaches to such burial ground, it shall be lawful for such board, with the approval of the vestry or respective vestries, to purchase such cemetery; and where in the like case any cemetery has been so purchased before the passing of this act, the purchase thereof shall be deemed to have been lawful: Provided always, that, notwithstanding such purchase, such order in council shall remain in full force and effect in relation to such cemetery (*a*).—20 & 21 Vict. c. 81, s. 26.

PURCHASE AND SETTLEMENT OF LANDS.

For the providing such burial ground it shall be lawful for the burial board, with the approval of the vestry or vestries of the parish or respective parishes, to contract for and purchase any lands for the purpose of forming a burial ground (*b*), or for making additions

(*a*) Where a burial ground vested in the rector of the parish had been closed by order in council, and twelve years subsequently part thereof was taken by a corporation, the purchase money being paid into court, it was held that the rector was entitled to the dividends. *Ex parte* Rector of Liverpool, 23 L. T., N. S. 354; Law Rep. 11 Eq. 15. Also so held where part of a burial ground, taken in like manner by a railway company, had been vested in the rector and churchwardens for the benefit of the parish, the same not having been closed but used as a burial ground up to the time of the purchase (*Ex parte* Rector of St. Martin's, Birmingham, 23 L. T., N. S. 575; Law Rep. 11 Eq. 23;—but where, under a special statute, part of a consecrated burial ground, which had been closed by order in council, was subsequently taken under the Lands Clauses Act for a public improvement and converted into building land, it was held that the owner of the freehold was not entitled to the improved value thereby occasioned, but the value should be estimated as it was prior to the passing of the act (*Stebbing v. Metropolitan Board*, 23 L. T., N. S. 530, Law Rep. 6 Q. B. 37).

(*b*) See Appendix, Form 8, p. 265.

to any burial ground to be formed or purchased under this act, as such board may think fit, or to purchase from any company or persons entitled thereto any cemetery or cemeteries, or part or parts thereof, subject to the rights in vaults and graves, and other subsisting rights, which may have been previously granted therein: Provided always, that it shall be lawful for such board, in lieu of providing any such burial ground, to contract with any such company or persons entitled as aforesaid for the interment in such cemetery or cemeteries, and either in any allotted part of such cemetery or cemeteries or otherwise, and upon such terms as the burial board may think fit, of the bodies of persons who would have had rights of interment in the burial grounds of such parish or respective parishes.—15 & 16 Viet. c. 85, s. 26.

“The Lands Clauses Consolidation Act, 1845 (a),”

(a) The Lands Clauses Consolidation Act here referred to is the 8 & 9 Viet. c. 18, which may be applied to all undertakings authorised by any “special act” thereafter to be passed, so that the two may be construed together as forming one act (s. 1). The chief provisions incorporated are as follows:—The promoters of the undertaking (*i. e.* the burial board, *vide supra*) may purchase land by agreement (s. 6); parties under any disability being thereby enabled to convey (s. 7), to enfranchise or release lands from incumbrances, or apportion incumbrances (s. 8); the purchase-money in such cases to be paid into the Bank (s. 9). Lands in fee simple may be sold on chief rents, but if on any other tenure, consideration money to be in a gross sum (s. 10). The rent to be charged on the rates (s. 11). Municipal corporations may not convey lands without the approval of the Treasury (s. 15). Purchase-money payable to parties under disability, amounting to 200*l.* and upwards, to be paid into the Bank in the name of the accountant-general, to be applied as the court shall direct (s. 69). In the meantime to be invested (s. 70). If under 200*l.* and exceeding 20*l.*, it may be paid as aforesaid, or to two trustees, to be applied in like manner (s. 71). Sums not exceeding 20*l.* to be paid to parties entitled to rents. All sums exceeding 20*l.* payable under contract with persons not absolutely entitled, to be paid into

except the provisions of that act "with respect to the purchase and taking of lands otherwise than by agreement," "with respect to the recovery of forfeitures, penalties, and costs," "with respect to lands acquired by the promoters of the undertaking under the provisions of 'The Lands Clauses Consolidation Act, 1845,'

the Bank (s. 73); to be applied under direction of the court (s. 74). On payment of the money into the Bank after agreement, owners shall convey, or in default, a deed-poll may be executed by the burial board (s. 75); and purchase-money deposited (s. 76); and on receipt from the cashier of the Bank and execution of the deed-poll, lands shall vest absolutely, and possession may be taken by the burial board (s. 77). Money to be invested as the court may direct (s. 78); and dividends paid to parties in possession at the time of the purchase (s. 79). Costs (except those arising from neglect of parties entitled) to be paid by the burial board (s. 80). Form of conveyance prescribed (s. 81). Costs of same to be borne by burial board (s. 82); to be taxed in case of disagreement (s. 83). The purchase-money is to be paid previous to right of entry, except to survey soil, set out line of works, &c., on giving not less than three or more than fourteen days notice, and making compensation for damage (s. 84); and except also on deposit by way of security and giving bond (s. 85). Cashier to give receipt (s. 86); and deposit to be applied under direction of the court (s. 87). In the absence of the accountant general, deposit may be paid to cashier of the Bank, to be subsequently placed to his account (s. 88). Burial boards entering lands without consent prior to payment of purchase-money shall forfeit 10*l.* to the party in possession over and above damage, to be recovered before two justices, and 25*l.* per day for continuing in unlawful possession after conviction, recoverable with costs in any superior court (s. 89). Burial board may be put in possession by the sheriff, on becoming entitled to enter (s. 91). Conveyances of copyhold land to be enrolled (s. 95) may be enfranchised (s. 96) by the lord (s. 97). Copyhold rents may be apportioned by two justices (s. 98). Commonable rights may be compensated (s. 99), and lands conveyed by the lord (s. 100). Commoners to determine their rights by agreement (s. 101). Meeting convened to treat (s. 102) may appoint a committee (s. 103) to agree with the burial board (s. 104). In default of such meeting or appointment of committee, surveyor appointed by two justices to determine such compensation (s. 106). Upon payment or tender of which lands to vest (s. 107). Power to redeem mortgages (ss. 108 to 114), to release rent-charges (ss. 115 to 118), to apportion leases (ss. 119 to 122). The principal clauses above referred to will be found at length in the Appendix, p. 102, *et seq.*

or the special act, or any act incorporated therewith, but which shall not be required for the purposes thereof," and "with respect to the provision to be made for affording access to the special act by all parties interested," shall be incorporated with this act ; and for the purposes of this act the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean any such burial board (*a*).—15 & 16 Vict. c. 85, s. 27.

It shall be lawful for any such board, with the approval of the vestry, to sell and dispose of any lands purchased by them under this act, or any part thereof, in which no interment shall have taken place, and which it may appear to the board may be properly sold or disposed of ; and for completing and carrying any such sale into effect such board may make and execute a conveyance of the lands sold and disposed of as aforesaid unto the purchaser, or as he shall direct ; and such conveyance shall be under the hands of at least two of the members of the board, and under the seal of the board ; and the word "grant" in such conveyance shall have the same operation as by the said Lands Clauses Consolidation Act, 1845, is given to the same word in a conveyance of lands made by the promoters of the undertaking ; and a receipt under the hands of two of the members of the board shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received ; and the money to arise from such sale shall

(*a*) See Appendix, Forms 11 and 12, p. 267.

be applied to such of the purposes of this act as the board shall think fit.—15 & 16 Vict. c. 85, s. 28.

It shall be lawful for any burial board, with the sanction of one of her Majesty's principal secretaries of state, and subject to regulations approved of by him, to let any land purchased by and vested in them under this act or any of the acts hereinbefore recited, and which has not been consecrated, and in which no body has been at any time interred, and which is not for the time being required for the purposes of a burial ground, in such manner and on such terms as such board may see fit, but so nevertheless that power shall be reserved to such board to resume any such land which may be required for the purposes aforesaid, upon giving six months notice.—18 & 19 Vict. c. 128, s. 17.

Provided always, that any burial board under this act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the poor law board, may from time to time appropriate for the purposes of a burial ground for such parish, either alone or jointly with any other parish or parishes, any land vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish (*a*), or for any specific charity: Provided always, that where any land so taken and appropriated shall be subject to any charitable use such lands shall be taken on such conditions

(*a*) Land held for the benefit of some of the poor only may not be appropriated under this section. See *In re Egham Burial Board*, Appendix, p. 220.

only as the Court of Chancery in the exercise of its jurisdiction over charitable trusts (*a*) shall appoint and direct.—15 & 16 Viet. c. 85, s. 29.

CHAPELS, AND LAYING OUT GROUNDS.

It shall be lawful for any burial board to lay out and embellish any burial ground provided by such board in such manner as may be fitting and proper (*b*), and to build on any land to be purchased or appropriated for a burial ground under this act, and according to a plan to be approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the United Church of England and Ireland ; and such burial ground may be consecrated by the bishop of the diocese, when the same shall appear to him to be in a fit and proper condition, for the purposes of interment according to the rites of the United Church : Provided always, that in providing any burial ground such board shall set apart a portion thereof which shall not be so consecrated as aforesaid, and may build thereon a suitable chapel or chapels for the performance of funeral service (*c*).—15 & 16 Vict. c. 85, s. 30.

(*a*) Any application to the court under these acts must have the sanction of the Charity Commissioners (*Ex parte the Watford Burial Board*, 2 Jur., N.S. 1045).

(*b*) The provision and laying out of a burial ground will include all matters incident thereto, such as making proper approaches. Thus, in case of a road, or an improvement of an existing road, to a new cemetery being required in a parish consisting of several hamlets, each separately rated for highways, it is presumed that the approach will be made by the burial board ; though it might, nevertheless, be prudent to take a money-vote from the vestry “ for providing and laying out a cemetery and making or improving the approaches thereto.”

(*c*) Vide *ante*, pp. 59-60.

It shall not be necessary to erect or maintain any wall or fence between the consecrated and the unconsecrated portions of any burial ground provided under the hereinbefore recited acts and this act, or any of them : Provided always, that in the case of any burial ground where there shall be no such wall or fence, it shall be the duty of the burial board having the care of such burial ground to place, and from time to time to repair and renew, such boundary marks of stone or iron as may be sufficient to show the boundaries of such consecrated and unconsecrated portions respectively.—20 & 21 Vict. c. 81, s. 11.

If upon the application in writing by any burial board to the bishop of the diocese for the consecration of a burial ground, declared in such writing to be in a fit and proper condition for the purpose of interment according to the rites of the United Church of England and Ireland, the said bishop shall refuse to consecrate the same, it shall be lawful for such burial board to appeal from such refusal to the archbishop of the province, who shall decide the matter in dispute; and if the said archbishop shall decide that the said burial ground is not in a fit and proper condition as aforesaid, then the board shall be bound to put the said ground in a fit and proper condition; and if the said archbishop shall decide that the said burial ground is in a fit and proper condition as aforesaid, and ought to be consecrated, such decision shall be communicated in writing by the archbishop to the bishop aforesaid; and if after such communication the said bishop shall not within one calendar month consecrate the said

burial ground, the said archbishop shall, under his hand and seal, license the same for the interment of bodies according to the rites of the United Church of England and Ireland, and the licence of the said archbishop so granted as aforesaid shall, until such burial ground be consecrated, operate to make lawful the use of the same as if it had been consecrated.—20 & 21 Vict. c. 81, s. 12.

When any burial board shall by virtue of section thirty of the said act build on any burial ground provided by such board a chapel for the performance of the burial service according to the rites of the United Church of England and Ireland, they shall also build, on the portion of such ground set apart for burials otherwise than according to the rites of the said church, such chapel accommodation for the performance of the burial service by persons not being members of the said church as may be approved of by one of her Majesty's secretaries of state.—16 & 17 Vict. c. 134 (part of), s. 7.

And whereas doubts have arisen whether in all cases in which any burial board shall build in any burial ground provided by such board a chapel for the burial service according to the rites of the United Church of England and Ireland, such burial board is not also bound by law to build a chapel or chapels upon the unconsecrated part of such burial ground for the performance of burial service for persons not being members of the said church : Be it enacted, that in any such case as aforesaid, where it shall appear to one of her Majesty's principal secretaries of state, upon the

representation of a majority of the vestry of any parish, consisting of not less than three-fourths of the members of the same (*a*), that the building of a chapel upon the unconsecrated part of any such burial ground for the use of persons not being members of the said church is undesirable and unnecessary, it shall be lawful for the said secretary of state, if he shall think fit, to signify his opinion to that effect to the burial board of the parish, and the said burial board shall thereupon be relieved from all obligation to build the same (*b*): Provided always, that such secretary of state shall not signify his opinion as aforesaid unless it be shown to his satisfaction that notice of the intention to propose to such vestry to make such representation was given in manner required by law for notices of vestry meetings, and of the special purposes thereof.—18 & 19 Viet. c. 128, s. 14.

In any case where the burial boards appointed under the said recited acts of the fifteenth and sixteenth

(*a*) The representation should be made by letter to the Secretary of State, Home Office, Whitehall.

(*b*) From this and the previous clauses it will be seen that in every case in which a new burial ground is provided under these acts (except under sect. 10 of the 18 & 19 Vict. c. 128), a chapel *may* be built on the consecrated portion and another on the unconsecrated portion of the ground; but where an *episcopal* chapel is erected on the consecrated ground, it is imperative that another *shall* be also built on the unconsecrated ground, unless it be deemed unnecessary by three-fourths of the vestry, and by the secretary of state. There may be instances where neither is required by reason of the proximity of both Church and Dissenting chapels to the new ground. There are cases also where, the church being close at hand, no episcopal chapel is needed; but it is desirable to build for the accommodation of Dissenters. In the third case, the church may be distant and the Dissenters' chapels near, or there may be no Dissenters in a small parish; therefore under the last-mentioned act means are provided to enable the burial board to erect an episcopal chapel only.

and the sixteenth and seventeenth years of her Majesty, or either of them, for any two parishes, shall provide separate burial grounds for such parishes respectively (*a*), and such burial grounds shall adjoin each other, it shall be lawful for the said burial boards to concur in building, either on one of the said burial grounds or partly on one of such grounds and partly on the other, such chapels as are authorised to be built by the said acts, and that such chapels when erected shall be used in common by both of such parishes, and be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively, in such manner, consistent with the provisions of the said acts or either of them, as the said burial boards shall mutually agree upon; and that the said burial boards may agree as to the proportions in which the expenses of erecting such chapel accommodation shall be borne by each of the said boards respectively; and the proportion for each of such parishes of such expenses shall be chargeable upon and paid in the same manner as the costs of providing burial grounds under the said acts; and where any burial board shall provide a burial ground, and cause chapels to be built thereon, pursuant to the said recited acts, it shall be lawful for such burial board, with the sanction of one of her Majesty's principal secretaries of state, to contract with any other burial board whose burial ground shall adjoin the one on which such chapels shall so have been built, for the use of such chapels, in such mannner and on such terms as such

(*a*) Vide *ante*, p. 58.

respective burial boards shall mutually agree, and that during the existence of any such agreement such chapels shall be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively.—18 & 19 Vict. c. 128, s. 16.

Any burial board may from time to time enter into any contract with any persons or companies for building any chapel or chapels as aforesaid, and inclosing, laying out, and embellishing any burial ground, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this act, which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance (*a*) ; and all such contracts or true copies thereof, shall be entered in books to be kept for that purpose: Provided always, that no contract above the value or sum of one hundred pounds shall be entered into by such burial board for the purposes of this act unless previous to the making thereof fourteen days notice shall be given in one or more of the public newspapers published in the county or counties in which the parish or respective parishes shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the burial

(*a*) See Appendix, Forms 14 and 15, pp. 269-72.

board at a certain time and place in such notice to be mentioned, but it shall not be incumbent on the burial board to contract with the person offering the lowest price.—15 & 16 Vict. c. 85, s. 31.

RIGHTS OF PARTIES—FEES.

From and after the consecration as aforesaid of any burial ground provided under this act (except any portion thereof intended not to be so consecrated), or where all or any part of such burial ground, by reason of the same being already consecrated, shall not require to be consecrated, then from and after such time as the bishop of the diocese shall appoint, such burial ground shall be deemed the burial ground of the parish for which the same is provided, and where the same is provided for two or more parishes such burial ground shall be in law as if such parishes were one parish, and as if such burial ground were the burial ground of such one parish ; and every incumbent or minister of the parish (a) or of each of the parishes (as the case may be) for which such burial ground is provided shall, by himself and his curate, or such duly qualified persons as such incumbent or minister may authorise, perform the duties and have the same rights and authorities for the performance of religious service in the burial in such burial ground, or in the consecrated portion thereof, of the remains of parishioners or inhabitants of the parish of which he is such incumbent or minister, and shall be entitled to receive the same fees in respect of such burials which he has previously

(a) This will include all incumbents in a parish (*Day and Cobb v. Barnsley*, B. B. 6 New Reports, 156).

enjoyed and received (a) ; and the clerk and sexton of such parish or of each of such parishes shall (when necessary) perform and exercise the same duties and functions in respect of the burial of the remains of parishioners or inhabitants of the parish of which he is clerk or sexton in such burial ground or the consecrated portion thereof, and shall be entitled to receive the same fees on such burials, as he has previously performed and exercised and received, as if such burial ground were the burial ground of the respective parish of such incumbent or minister, clerk and sexton respectively (b) ; and the parishioners and inhabitants

(a) Where a church had no burial ground in which, before being closed by order in council, persons dying within the district would have been buried as of right, the incumbent was not held entitled to any burial fees in a cemetery provided for the district under the burial acts (*Hornby v. Burial Board of Toxteth Park*, Appendix, p. 227), but as to ecclesiastical districts created under certain acts, see 20 & 21 Vict. c. 81, s. 5. Parochial mortuary fees are usually such as have become established by custom, which, by the ecclesiastical law, requires a usage of forty years to be proved. The usual parson's fee for breaking the soil is 3s. 4d., and the same in the chancel, 6s. 8d. (Degge, 146). These fees, however, as well as for the erection of monuments, are varied by custom, or by statute, and sometimes are payable to the churchwardens (*Andrews v. Cawthorne*, Willes, 535 ; 2 Show. 184 ; *Anderson v. Walker*, 3 Salk. 86 ; *Littlewood v. Williams*, 6 Taunt. 277 ; *Bardin v. Calcott*, 1 Hagg 14). If there be no custom, the parson may demand a reasonable fee for the erection of a monument (1 Burn's E. L. 273). But a custom to take burial fees in respect of all persons dying in the parish is illegal (*Topsal v. Ferrers*, 1 Burn's Eccl. Law, 268). An incumbent may be entitled to burial fees in respect of any person who was a *communicant* of the parish church, wheresoever the corpse be buried (*Ibid.*) ; although a fee is not due to a parson for the burial of a mere parishioner which does not take place within his parish : the general rule is, that if no service be performed, there shall be no fee (1 Lec's Ec. Ca. 395). By 59 Geo. 3, c. 134, s. 11, the commissioners are empowered, with consent of vestry and of the bishop, to fix any table of fees for any parish.

(b) See Appendix, Form 16, p. 273. A burial board has no right to prevent the parish sexton from performing the duties of

of such parish, or of each of such parishes, shall have the same rights of sepulture in such burial ground as they respectively would have had in the burial ground or burial grounds in and for their respective parish, subject nevertheless to the provisions herein contained (a).—15 & 16 Viet. c. 85, s. 32.

his office, either by himself or by deputy, in the cemetery—nor will trespass lie if he enter the cemetery for this purpose contrary to the orders of the board, or for tolling the bell (*St. Margaret's, Rochester, Burial Board v. Thompson*, 24 L. T. N. S. 673 ; Law Rep. 6, C. P. 445, see Appendix, p. 252).

(a) By the common law the churchyard is the common burial place for all persons dying within the parish not within certain exclusions of the ecclesiastical laws ; every person is entitled to be buried therein without charge for breaking the soil (Degge, p. 1, c. 12) ; and by Canon 68, no minister shall refuse or delay to bury any corpse, convenient warning being given him thereof (*R. v. Stewart*, 4 P. & D. 889 ; 12 Ad. & L. 773 S. C.). The rubric, confirmed by 13 & 14 Car. 2, c. 4, forbids the use of the customary office on unbaptised persons ; but a clergyman cannot refuse to bury the child of a dissenter (*Kemp v. Wickes*, 3 Phil. 264) ; nor the body of a person baptised with water by a layman, and in the name of the Holy Trinity (*Escott v. Martin*, 6 Jur. 765) ; though it is in his discretion whether or not the body be carried into the church (1 Burn's E. L. 267). A clergyman having due notice of such a death, and refusing to perform the office, was suspended three months (*Martin v. Escott*, 2 Curt. 692). Persons *felo de se* are excluded from Christian burial ; but by 4 Geo. 4, c. 52, the coroner shall direct such remains to be privately placed in the parish churchyard, between nine and twelve o'clock at night, within twenty-four hours after the inquisition ; and as to the propriety of the verdict the minister cannot inquire (*Cooper v. Dodd*, 2 Robert, 270). A clergyman cannot be compelled to bury the corpse of any person in a particular vault or part of the churchyard (*Ex parte Blackmore*, 1 B. & Adol. 122). He has a discretion on the subject. Burial in an unusual manner cannot be enforced, *c. g.*, in iron coffins (*R. v. Colledge*, 2 B. & A. 806) ; and when such are received, an increased rate for longer occupation of the ground may be charged (*S. C.*, 2 Hagg. 333). A custom that every parishioner has a right to bury his dead relations as near his ancestors as possible in a particular part of the churchyard cannot be maintained (*Fryer v. Johnson*, 2 Wils. 28). The accustomed fees for burials are payable, although, if denied, the clergyman must still perform the office of burial (*Gilbert v. Buzzard*, 2 Hagg. 355). The burial of persons dying out of the parish (except in the case of travellers

Until a new burial ground shall be provided and consecrated for any new parish or district created or to be created pursuant to the provisions of the sixth and seventh Victoria, chapter thirty-seven, the seventh and eighth Victoria, chapter ninety-four, and the nineteenth and twentieth Victoria, chapter one hundred and four, or any or either of them, and to which the said acts, or any or either of them, may apply, the incumbent of such new parish or district (if any burial ground has been or shall be provided under the herein recited acts for the burial of the dead, or any or either of them, for any parish or parishes out of rates to which such new parish or district, or any part thereof, shall have contributed or contribute or be liable) shall, with respect to the burial in such last-mentioned burial ground of the remains of the parishioners or inhabitants of such new parish or district, or of such part thereof as shall have contributed or contribute as aforesaid, as the case may be, perform the same duties, and have the same rights, privileges, and authorities, and be entitled to the same fees, and

having a family burying place) must have the concurrence of the churchwardens and the incumbent (*Harrow Churchwardens*, 1 Burn's E. L. 258). No person, unless he be duly authorised, can be permitted to perform service in consecrated ground (*Johnson v. Friend*, 6 Jur. N. S. 280). There is no objection to the reading of the burial service on unconsecrated ground, and the solemnization of burial is not necessarily open to all the parishioners, there being many private burial grounds from which the public may be excluded (see *Kingsmill v. Rugg*, 16 L. T. N. S. 540, Law Rep. 1 A. & E. 343). But a clergyman cannot be compelled to officiate if the ground be not consecrated; same case, 18 L. T. N. S. 94, Law Rep. 2, P. C. App. 59. In the case of *Nevill v. Baker* (*Arches Court*, April, 1862, not reported) it was stated *per euriam* that whether a clergyman can be bound to perform service (the custom being proved) in unconsecrated ground, might be a question of some difficulty, but the onus of proof lies with those who deny the fact of consecration.—(See also note, p. 27.)

also the clerk and sexton of such new parish or district shall, when necessary, respectively perform the same duties, and be entitled to the same fees, in respect of such burials, as if the said burial ground were exclusively the burial ground of such new parish or district (*a*), subject nevertheless to all provisions to which the incumbents, clerks, and sextons of original parishes are respectively subject in and by the said burial acts, or any or either of them : Provided also, that nothing herein contained shall affect the rights or privileges of any existing incumbent, clerk, or sexton without the consent of such incumbent, clerk, or sexton respectively (*b*).—20 & 21 Vict. c. 81 (part of), s. 5.

(*a*) Such fees recovered by incumbent of a new parish in an action against the burial board, *Cronshaw v. Wigan Burial Board*, 25 L. T. N. S. 536, affirmed on appeal, 28 L. T. N. S. 283. See Appendix, p. 258.

(*b*) By Lord Blandford's Act (19 & 20 Vict. c. 104) commissioners may, on application of incumbent and with consent of bishop, authorize solemnization of burials, &c, in district parishes, the fees to be paid to the incumbent (s. 11); and in every case where fees are reserved to incumbent of original parish, same shall be accounted for every three months; after first avoidance of original incumbency, such fees shall belong to district incumbent (s. 12). Every parish created thereunder, or under Sir Robert Peel's Act (6 & 7 Vict. c. 37, and 7 & 8 Vict. c. 94), shall be held to be an ecclesiastical district for the purposes of the Burial Acts. The sexton of a chapelry constituted under 59 Geo. 3, c. 134, s. 16, which had been thus formed by the commissioners into a distinct parish, was held, by virtue of the above proviso, entitled to the fees in respect of burials in a cemetery subsequently provided for the mother parish. (*Ormerod v. Blackburn Burial Board*, 28 L. T. N. S. 438). Where a local cemetery act provided that fees should be paid to the incumbent of the parish, or other ecclesiastical district, &c., it was held that burial fees, in respect of persons dying within a district created after the passing of the local act, though the order in council was silent as to burials, were payable to the incumbent of such district, and not to the incumbent of the mother parish (*Vaughan v. South Metropolitan Cemetery Company*, 1 Johns. & H. 256). A parish chapel in an ancient churchyard having been declared by order in council under 19 & 20 Vict. c. 104, to be the church of a new district, was held not to vest in the incumbent of such new district by the operation of sec. 10 of that act, but the freehold re-

In any burial ground provided under the powers of the acts hereinbefore recited or this act, respecting which one of her Majesty's principal secretaries of state shall have certified that the necessary provisions shall have been complied with, it shall be lawful for the incumbent or incumbents of such parish or parishes for which such burial ground is provided, or his or their curate or curates, or such duly qualified person as any such incumbent may authorise, if such incumbent, curate, or such duly qualified person respectively think fit, to bury in such burial ground prior to the decision of the bishop or archbishop upon the application for the consecration thereof.—20 & 21 Vict. c. 81, s. 13.

Any burial board, under such restrictions and conditions as they think proper, may sell the exclusive right of burial (*a*), either in perpetuity or for a limited period, in any part of any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground, but there shall be payable to the incumbent or minister of the parish out of the fees or payments to be paid in respect of any rights acquired under this enactment in the consecrated part of such burial ground (in lieu of the fees or sums which he would have been entitled to on the grant of the like

mained in the vicar of the mother parish (*Champneys v. Arrow-smith*, Law Rep. 2 C. P. 602, 17 L. T. N. S. 261, Law Rep. 3 C. P. Ex. Ch. 107).

(*a*) See Appendix, Form 17, p. 274 ; and see note, p. 83.

rights in the burial ground of his parish) such fees or sums as shall be settled and fixed by the vestry with the approval of the bishop of the diocese, or if no such fees or sums shall have been so settled, then such fees as he would by law or custom have been entitled to on the grant of the like rights in the burial ground of his parish.—15 & 16 Vict. c. 85, s. 33.

Every burial board under this act shall and may (without prejudice to the fees and payments herein specially provided for) fix and settle and receive such fees and payments in respect of interments in any burial ground provided by such board as they shall think fit, and also the sums to be paid for the exclusive right of burial, either in perpetuity or for a limited period, in any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground, and every burial board, with the consent of the vestry, may from time to time revise and alter such fees, payments, and sums as aforesaid ; and a table showing such fees, payments, and sums, and all other fees and payments in respect of interments in such ground, shall be printed and published, and shall be affixed and at all times continued on some conspicuous part of such burial ground (*a*).—15 & 16 Vict. c. 85, s. 34.

(*a*) A scale of the fees which have been adopted by some burial boards, is given in the Appendix, p. 235, also a suggested scale, p. 282.

All such fees, payments, and sums as may be fixed, settled, and received by any burial board under section thirty-four of the said act of the fifteenth and sixteenth years of her Majesty, shall be so fixed and settled subject to the approval of one of her Majesty's principal secretaries of state; and no such fees, payments, or sums shall be altered or varied without such approval.—18 & 19 Vict. c. 128, s. 7.

No fees shall be charged or received by any burial board in respect of any service done or right granted in the unconsecrated portion of any burial ground provided by such board, but such as are identical in amount with the fees charged and received in respect of the same service or right in the consecrated portion of such ground, less any such portion of such corresponding fees or payments which may be received for or on account of any incumbent, churchwarden, clerk, or sexton, or of any trustee for or on behalf of any incumbent, churchwarden, clerk, or sexton.—20 & 21 Vict. c. 81, s. 17.

Where at the time of the discontinuance of interment in any burial ground the fees in respect of burials therein are divided between the incumbent of the parish and the incumbent of any district parish or other ecclesiastical district, each incumbent shall have the same proportion of the fees in the burial ground to be provided under this act as he was entitled to in respect of interments in the old burial ground (a).—15 & 16 Vict. c. 85, s. 35.

(a) All acts, laws, and customs shall apply in the district parishes formed under the act 59 Geo. 3, c. 134, in the same manner

Where fees or any portion of fees payable on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any parish for which a burial ground is provided alone or jointly with any other parish or parishes under this act, are by law or custom payable to the churchwardens of any parish, or to trustees or other persons, for or towards the payment of any annuity, or stipend to the incumbent or minister, or any other parochial purpose, or the discharge of any debt or liability, such fees or portion of fees shall be payable in the burial ground to be provided as aforesaid for such parish under this act, and shall be received by the burial board and paid to the parties entitled to receive the same ; and where fees or payments have been received on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any such parish by any such churchwardens, or by trustees

as if the same had been ancient and distinct parishes (s. 17). But said commissioners may direct that all or any of the fees, in case of division of any parish into district parishes, shall continue to belong to the incumbent of the original parish church (3 Geo. 4, c. 72, s. 12). Similar provisions for additional churches without division of parishes by 1 & 2 Will. 4, c. 38, s. 14. If districts subsequently assigned to such churches,—commissioners with consent of bishop, or bishop alone, may apportion fees after next avoidance of the parish church to incumbents of district churches (3 & 4 Vict. c. 60, s. 18). By 8 & 9 Vict. c. 70, s. 10, fees in church of any consolidated chapelry formed as therein mentioned, to belong to incumbent thereof after next avoidance of incumbency of original parish church. By the 14 & 15 Vict. c. 97, ss. 2, 3, 4, compensation may be made by commissioners to incumbents of original parishes for loss of fees by reason of their transfer to incumbents of district chapelries, consolidated chapelries of churches endowed under 1 & 2 Will. 4, c. 38 : and after such compensation, or where no reservation of fees was made, all such fees shall belong to the incumbents of such district chapelries, &c. (14 & 15 Vict. c. 97, ss. 5, 6).

or other persons, for the purpose of discharging any periodical payment or other liability, it shall be lawful for the burial board, upon the request of such churchwardens, trustees, or persons, to pay from time to time, out of the fees and monies received by them on account of such parish, such amount as may be necessary for discharging such periodical payment or liability.—15 & 16 Vict. c. 85, s. 36.

It shall be lawful for the vestry of any parish from time to time, if they think fit, with the consent of the bishop of the diocese, to revise and vary the fees payable to the incumbent, clerk, and sexton, and other persons and bodies respectively, under the provisions of this act, or, with such consent as aforesaid, to substitute for the fees payable to such incumbent, clerk, and sexton, and other persons and bodies respectively, a fixed annual sum of such amount as to such vestry may seem just, to be payable by such periodical payments as such vestry may appoint, and in such last-mentioned case the fees which would otherwise be payable under this act to the incumbent, clerk, and sexton, and such other persons and bodies respectively, shall be paid to the burial board, and such fixed payments as aforesaid shall be paid by such board.—15 & 16 Vict. c. 85, s. 37.

The general management, regulation, and control of the burial grounds provided under this act shall, subject to the provisions of this act and the regulations to be made thereunder, be vested in and exercised by the respective burial boards providing the same (a) ; pro-

(a) A rule that none but the servants of the burial board should

vided that any question which shall arise touching the fitness of any monumental inscription placed in any part of the consecrated portions of such grounds shall be determined by the bishop of the diocese.—15 & 16 Viet. c. 85, s. 38.

Where a burial ground is provided under this act for the common use of two or more parishes, in case any question arise among the incumbents of such parishes as to the performanee of the burial service by a chaplain to be paid by means of contributions from such incumbents, or deductions from fees or sums payable to them, or otherwise touching the performanee of service in the consecrated part of such ground, the bishop of the diocese shall from time to time confirm any arrangement which a majority, or, in case of equal numbers, one-half of the incumbents shall approve, and such arrangement so confirmed shall be binding upon all the parties concerned.—15 & 16 Viet. c. 85, s. 39.

Where any body is buried in any of the cemeteries mentioned in *Schedule (B) to this act (a)*, at the expense of any union or parish, the fee or sum to be paid or payable on the interment of such body, or otherwise in respect thereof, to the incumbent of the parish or ecclesiastical district from which such body is removed for interment, shall not exceed the sum of one shilling, or where the incumbent now receives in respect of the like burial in the ground of his parish more than one

plant flowers on graves, held not sufficient to prevent such planting by a person to whom a grant of exclusive right of burial had been previously made (*Ashby v. Harris*, 18 L. T. N. S. 719, Law Rep. 3, C. P. 523).

(a) This schedule applies to the metropolis only. See p. 149.

shilling shall not exceed the sum so now received, and in no case shall exceed two shillings and sixpence ; and no other fee or sum whatsoever shall be payable in respect of such interment, to or for the use of any person as an officer of such parish or district, or for or on behalf of such parish or district, anything in *any act mentioned in the said Schedule (B).* or any other act notwithstanding.—15 & 16 Vict. c. 85, s. 49.

And section forty-nine of the said act shall extend to all cemeteries already established and hereafter to be established under the authority of parliament in like manner as to those mentioned in Schedule (B) to that act, and as respects the cemeteries to which such section is hereby extended, the same shall also apply in respect of burials at the expense of any hospital or infirmary in like manner as to burials at the expense of a union or parish.—16 & 17 Vict. c. 134 (part of), s. 7.

Where under any local act fees on interments in any burial ground of any parish are payable to the churchwardens of such parish, or to any trustees or other persons, for the purpose of enabling them to pay an annuity or stipend to the incumbent or minister, the fees which under this act or any act relating to any cemetery company, would on the interment in the cemetery of any company of any body brought from such parish be payable to such incumbent or minister, shall be payable to the said churchwardens, trustees, or persons, and any surplus of such fees which may remain in their hands after payment of such annuity or stipend shall be paid to such incumbent or minister—15 & 16 Vict. c. 85, s. 50.

REGISTRATION OF BURIALS.

All burials within any burial ground provided under the said act of the last session of parliament or this act shall be registered in a register book to be provided by the burial board providing such ground (or, where the same is provided by the Commissioners of Sewers of the city of London, then by such commissioners), and kept for that purpose according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England ; and such register book shall be so kept by some officer appointed by the said board or commissioners to that duty ; and in such register books shall be distinguished in what parts of the burial ground, and where the whole of such burial ground is not consecrated for interments according to the rites of the United Church of England and Ireland, whether in the portion so consecrated or in the portion not so consecrated, the several bodies (the burials of which are entered in such register books) are buried ; and in case such burial ground has been provided for more than one parish, such register shall be kept or indexed so as to facilitate searches for entries in such books in respect of bodies from the several parishes (*a*) ; and such register books, or copies or extracts therefrom, shall be received in all courts as evidence of the burials

(*a*) A convenient form of register and index printed in sheets ready for binding may be obtained of the publisher of this volume (see Appendix, p. 275 *et seq.*). In this form there is a column for "signature of officiating minister." Where the signature cannot be obtained, it may be convenient that the registrar should then insert the name.

entered therein, and copies or transcripts of such register books, verified and signed by such officer as aforesaid, shall be from time to time sent to the registrar of the diocese, to be kept with the copies of the other register books of the parishes within such diocese; and the said register books, so far as respects searches to be made therein and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by an act passed in the seventh year of King William the Fourth, intituled An Act for Registering Births, Deaths, and Marriages in England, so far as such regulations relate to register books of burials kept by any rector, vicar, or curate.—16 & 17 Vict. c. 134, s. 8.

That every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any register book of burials, kept according to the provisions of this act, or any part or certified copy of any part of such register, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register or certified copy thereof, or shall wilfully insert or cause to be inserted in any registry book or certified copy thereof, any false entry of any burial, or shall wilfully give any false certificate, or shall certify any writing to be a copy or extract of any such register book, knowing the same to be false in any part thereof, or shall forge or counterfeit the seal of any burial board, shall be guilty of felony (*a*).—20 & 21 Vict. c. 81, s. 15.

(*a*) By the Forgery Consolidation Act, 24 & 25 Vict. c. 98, it is enacted, *inter alia*, that whosoever shall unlawfully destroy, deface,

Whereas by the act of the fifty-second year of King George the Third, chapter one hundred and forty-six, section four, it is provided, that whenever the ceremony of burial shall be performed in any other place than the parish church or churchyard of any parish (or the chapel or chapelry of any chapelry providing its own distinct registers), and such ceremony shall be performed by any minister not being the rector, vicar, minister, or curate of such parish or chapelry, the minister who shall perform such ceremony of burial shall on the same or on the next day transmit to the rector, vicar, or other minister of such parish or chapelry, or his curate, a certificate of such burial, and the rector, vicar, minister, or curate of such parish or chapelry shall thereupon enter such burial according to such certificate in the book kept pursuant to that act for such purpose : And whereas distinct registers are by law required to be kept in the burial grounds provided under the burial acts : The recited enactment of the said act of King George the Third shall not apply in any case where the ceremony of burial is performed in a burial ground provided or to be provided under the acts of her Majesty hereinbefore

or injure, any register of burials required to be kept in England or Ireland, or forge or fraudulently alter any entry in any such register, or any certified copy thereof, or shall knowingly insert any false entry therein, or give a false certificate, or certify any copy knowing it to be false, or forge or counterfeit the seal of any burial board, or shall offer, utter, dispose of, or put off any such entry, copy, certificate, or seal, knowing the same to be false, forged, or altered, shall be guilty of felony and liable, at the discretion of the court, to penal servitude for life, or not less than three years, or to imprisonment, with or without hard labour, or solitary confinement (not more than one month at any one time, or three months in any one year), not exceeding two years.

recited and this act, or any of them.—20 & 21 Vict. c. 81, s. 16.

RATING AND PROTECTION OF NEW BURIAL GROUNDS.

No land already or to be hereafter purchased or acquired, under the provisions of any of the acts hereinbefore recited, for the purpose of a burial ground (with or without any building erected or to be erected thereon), shall while used for such purposes be assessed to any county, parochial, or other local rates at a higher value or more improved rent than the value or rent at which the same was assessed at the time of such purchase or acquisition.—18 & 19 Vict. c. 128, s. 15.

The provisions of “The Cemeteries Clauses Act, 1847,” with respect to the protection of the cemetery, shall be incorporated with this act, and be applicable to any burial ground provided under this act (*a*).—15 & 16 Vict. c. 85, s. 40.

(*a*) A penalty not exceeding 5*l*. for any damage or nuisance is imposed by this act, 10 & 11 Vict. c. 65, ss. 58, 59 (see Appendix, p. 127); and for the recovery of the penalty, clauses 145 to 149 and 151 to 160 of the Railway Clauses Act, 8 & 9 Vict. c. 20, are incorporated, by which it is provided that every penalty may be recovered by summary proceeding before two justices. Any justice to issue summons requiring offender to appear to be served personally, or left at usual place of abode; and on proof by one credible witness on oath, conviction may follow to the extent of the penalty incurred, and such costs as justices shall think fit. In default of payment, warrant of distress may be issued. Offender may be detained until return made to warrant of distress, or held to bail. If no sufficient distress can be had, offender may be committed without bail for any term not exceeding three months. Any surplus after distress and sale to be returned to the party. No distress shall be unlawful for want of form, but any defect to be satisfied by action on the case. Penalties must be sued for within six months. Any damage to be made good, in addition to the penalty

RECEPTION AND CONVEYANCE OF THE DEAD.

Any burial board may make such arrangements as they may from time to time think fit for facilitating the conveyance of the bodies of the dead from the parish or the place of death to the burial ground which shall be provided under this act, or to any other place of burial (*a*), subject to the provisions of this act and the regulations to be made thereunder, and it shall be lawful for any of the aforesaid cemetery companies to undertake any such arrangement, and to carry the same into effect, subject to the provisions and regulations as aforesaid.—15 & 16 Vict. c. 85, s. 41.

Whereas by section thirty-two of the act of the

to be determined by justices, and recoverable in like manner. Any witness may be summoned and examined on oath, and on neglect or refusal (reasonable expenses being paid), every such person shall forfeit not exceeding 5*l*. Any officer or agent of the company (*i.e.*, burial board), or person called to his assistance, may seize any offender and convey him before a justice without warrant. No proceeding to be quashed for want of form. Party may appeal within four months to quarter sessions, on giving security and ten days' notice in writing to the party against whom the appeal shall be brought. Court to make reasonable order thereupon. Appeal from any order of any metropolitan police magistrate to be subject to the terms provided in that behalf by 2 & 3 Vict. c. 71. Persons giving false evidence liable to the penalties of perjury. Any person guilty of violent or indecent behaviour in any burial ground or who shall disturb any clergyman celebrating divine service therein is liable to a penalty of 5*l*. or two months' imprisonment, 23 & 24 Vict. c. 32, s. 2. And for damage to any monument or fence to imprisonment not exceeding six months, with or without hard labour, 24 & 25 Vict. c. 97, s. 39.

(*a*) A convenient hand hearse has been used in many places, so constructed that the coffin may be taken into the church without bearers, the hearse being afterwards drawn over the grave, and the corpse let down by means of pulleys. See also "Suggestions," &c. in the Appendix, p. 301.

third year of King George the Fourth, chapter one hundred and twenty-six, it is enacted, that no toll shall be demanded or taken by virtue of that or any other act or acts of parliament on any turnpike road of or from any inhabitant of any parish, township, or place going to or returning from attending the funeral of any person who shall die and be buried in the parish, township, or place in which any turnpike road shall lie ; from and after the first day of July, one thousand eight hundred and fifty-eight, or from and after the termination of any now existing lease of tolls expiring before that date, the said enactment shall extend to exempt from toll every person going to or returning from attending the funeral of any person who shall be buried in any burial ground provided for the parish, township, or place in which he died under the acts hereinbefore recited and this act, or any of them, or under any other act of parliament, although such burial ground be not within the limits of the parish, township, or place for which it may have been provided, or in which the turnpike road shall lie (a).—20 & 21 Viet. c. 81, s. 14.

(a) If any collector shall demand and take a toll from any person or persons who shall be exempt from the payment thereof, and who shall claim such exemption, every such toll-collector shall forfeit and pay any sum not exceeding 5*l.* for every such offence (4 Geo. 4, c. 95, s. 30); penalties recoverable before any justice by warrant of distress, one moiety to be paid to informer and the other to the trustees of the road, and in default offender may be committed for any time not exceeding three calendar months (3 Geo. 4, c. 126, s. 141). Appeal against conviction for any sum exceeding 40*s.*, six days' notice being given, may be had to the next general or quarter sessions, whose decision shall be final (4 Geo. 4, c. 95, s. 87).

Clergymen going to or returning from parochial duty within their parishes are also exempt from toll, and this latter exemption

It shall be lawful for any burial board, with the approval of the vestry, and subject to the provisions of this act, and the regulations to be made thereunder, and for the churchwardens and overseers of the poor of any parish for which a burial board shall not have been appointed under this act, by the direction of the vestry, and subject as aforesaid to hire, to take on lease, or otherwise to provide fit and proper places in which bodies may be received and taken care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein (a), and for providing such places such burial boards may exercise the powers vested in them under this act for providing burial grounds ; and such churchwardens and overseers may exercise all such powers as, under the act of the fifty-ninth year of King George the Third, chapter twelve,

extends to the cases of clergymen who live out of the parishes in which they do duty regularly, and whether the turnpike gate be in either parish (*Temple v. Dickinson*, 28 L. J. M. C. 10, Q. B. ; 5 Jur. N. S. 363).

(a) Annoyance from offensive corpses previous to interment may to a great extent be prevented by the use of some disinfecting powder manufactured from carbolic preparations. Such may be sprinkled into the flannel or other material used for lining the coffin : also between two pieces of flannel as a covering for the face. In extreme cases sprinkled over the body as well. A powder of this kind was successfully used to diminish the danger of removing bodies in an advanced stage of decomposition after the famous lamentable explosions at the Lund Hill, Hartley, and Risca Collieries.

A patent has been obtained for a kind of shroud formed of two sheets of wadding cut the size and shape of a coffin, containing between them a layer of charcoal. In France, decomposing corpses have been covered by sawdust mixed with sulphate of zinc. Either of the foregoing is more convenient for the purpose than disinfectants in the liquid form ; and the efficacy, economy, and convenience of that first named has been best established.

or otherwise, the churchwardens and overseers of any parish not having a workhouse might exercise for providing a workhouse for such parish (a) (b).—15 & 16 Vict. c. 85, s. 42.

(a) The powers here extended are as follows:—The churchwardens and overseers in any parish might by direction of the vestry build a workhouse, or alter any building for the purpose; purchase or lease any ground within the parish (59 Geo. 3, c. 12, s. 8); and, by direction of the vestry and consent of two justices, might sell any insufficient workhouse, with the site thereof, in aid of the erection of a new workhouse (s. 9); or hire any suitable building, not more than three miles distant, in any adjoining parish, with like direction and consent (s. 10). Provided that not more than one shilling in the pound shall be raised or applied in any one year for the purposes therein mentioned, until a majority of inhabitants in general vestry assembled shall consent thereto, nor until two-thirds in value of all inhabitants (present or not) shall also sign their consent in the parish book (s. 14); but after one shilling in the pound shall have been actually levied and applied for such purposes, further sums might be raised by way of loan or sale of annuities, as therein directed, not exceeding five shillings in the pound (ss. 15, 16). For these clauses at length, see Appendix, p. 99.

(b) See also 20 & 21 Vict. c. 81, s. 6, p. 173. By 7 & 8 Vict. c. 101, s. 31, guardians, or, where none, overseers may bury poor persons dying within their unions or parishes, and may in certain cases, where requested, direct that the burial shall take place in the parish in which such poor person was chargeable, or in the parish in which the death occurred. By 13 & 14 Vict. c. 101, s. 2, the guardians may contribute such sum as the Poor Law Board shall approve, towards the enlargement of any churchyard in the union or parish wherein the workhouse shall be situate, or towards obtaining a burial ground wherein paupers dying in such workhouse may be buried on payment of the customary fees. And the 18 & 19 Vict. c. 79, s. 1, provides that where the burial ground of any parish is closed or overcrowded, such burial may take place in some neighbouring parish, the fees customary in such parish being paid; and by sect. 2 of the same act, the guardians or overseers are empowered to contract with any cemetery company or burial board, with the approval of the Poor Law Board, for the burial of any poor persons whom they may undertake to bury. This act is given entire in the Appendix, together with s. 31 of 7 & 8 Vict. c. 101; s. 2 of 13 & 14 Vict. c. 101; Provisions relative to Lunatics; Bodies cast from the sea, &c., &c., p. 159.

REGULATIONS BY SECRETARY OF STATE.

It shall be lawful for one of her Majesty's principal secretaries of state from time to time to make such regulations in relation to the burial grounds and places for the reception of bodies previously to interment which may be provided under this act as to him may seem proper (*a*) for the protection of the public health and the maintenance of public decency, and the burial boards and all other persons having the care of such burial grounds and places for the reception of bodies shall conform to and obey such regulations.—15 & 16 Viet. c. 85, s. 44.

Under this provision, the following regulations for burial grounds provided under the burial acts, have been issued (*b*) by the secretary of state :

1. The burial ground shall be effectually fenced, and, if necessary, under-drained to such a depth as will prevent water remaining in any grave or vault.

2. The area to be used for graves shall be divided into grave-spaces, to be designated by convenient marks (*c*), so that the position of each may be readily

(*a*) By sect. 103 of the Towns Improvement Clauses Act (10 & 11 Viet. c. 34), it is enacted that (within the limits of the special act with which such section shall be incorporated) no coffin shall be buried in any grave not being a vault or catacomb without at least thirty inches of soil between the ordinary surface of such burial ground and the upper side of the coffin, under a penalty of 5*l.* on the sexton and the person having the control of the ground respectively.

(*b*) July, 1857, and January, 1863, in lieu of those previously in force.

(*c*) It is apprehended that this purpose may be answered by placing marks along the boundaries of the cemetery ; *e g.*, numerals, at the sides, and letters at the ends. See Appendix, p. 284.

determined, and a corresponding plan kept on which each grave-space shall be shown.

3. The grave-spaces for the burial of persons above twelve years of age shall be at least nine feet by four feet, and those for the burial of children under twelve years of age, six feet by three feet, or, if preferred, half the measurement of the adult grave-space, namely, four-and-a-half feet by four feet (*a*).

4. A register of graves (*b*) shall be kept, in which the name, age, and date of burial in each shall be duly registered.

5. No body shall be buried in any vault or walled grave, unless the coffin be separately entombed in an air-tight manner (*c*); that is, by properly cemented stone or brickwork, which shall never be disturbed.

6. One body only shall be buried in a grave at one time, unless the bodies be those of members of the same family.

7. No un-walled grave shall be re-opened within fourteen years after the burial of a person above twelve years of age, or within eight years after the burial of a child under twelve years of age, unless to bury another

(*a*) Where grounds had been already laid out with grave-spaces of the sizes prescribed in the former regulations it may have been inconvenient to alter them; but newly formed grave-spaces should not be less than the dimensions here given.

(*b*) This will be distinct from the register of burials, and will simply contain a record of the contents of each grave-space as it is used. See Appendix, p. 280.

(*c*) In vault-burial metallic coffins have been much used, but this practice is dangerous, inasmuch as the gases generated are liable to burst such coffins; they are, at the same time, more expensive than separate entombment with wood coffins, by which method the noxious gases are allowed imperceptibly to escape.

member of the same family (*a*), in which case a layer of earth not less than one foot thick shall be left undisturbed above the previously buried coffin; but if, on re-opening any grave, the soil be found to be offensive, such soil shall not be disturbed, and in no case shall human remains be removed from the grave.

8. No coffin shall be buried in any unwallled grave within four feet of the ordinary level of the ground (*b*), unless it contains the body of a child, under twelve years, when it shall not be less than three feet below that level.

It shall be lawful for one of her Majesty's principal secretaries of state from time to time to appoint and authorise any person to inspect any burial ground or cemetery, parochial or non-parochial, or place for the reception of bodies, to ascertain the state and condition thereof, and where regulations in relation thereto have been made or may be made by the secretary of state under the said acts or any of them, to ascertain whether such regulations have been observed and complied with; and if any person having the care of any such burial ground or cemetery (*c*) or other place shall

(*a*) It will be seen that the grave is not required to be purchased, as heretofore, so that the members of a poor family may be buried together, as well as those of the rich.

(*b*) Measuring from the top of the coffin to the natural surface of the cemetery.

(*c*) The Brompton or West London Cemetery is vested in the Commissioners of Works (subject to the existing private rights), with power of sale, and in the meantime the secretary of state may permit its use for interments (15 & 16 Viet. c. 85, ss. 45, 6, 7, 8). Appendix, p. 142.

obstruct any person so authorised to inspect the same, or if any person having the care of any burial ground or place for the reception of bodies subject to such regulations as aforesaid shall violate or neglect or fail to observe and comply with any such regulation, or any regulations imposed by this act, every person so offending shall upon summary conviction thereof before two justices forfeit and pay a sum not exceeding ten pounds (a).—18 & 19 Vict. c. 128, s. 8.

Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may have been interred in any place of burial, without licence, under the hand of one of her Majesty's principal secretaries of state, and with such precautions as such secretary of state may prescribe as the condition of such licence (b); and any person

(a) For mode of recovering penalties, see note, p. 25.

(b) See note (a), p. 92. No licence from the secretary of state will be necessary for removal where a faculty is granted. Such licence to remove a body from one consecrated place of burial to another without a faculty might exempt parties acting under it from penal consequences in a court of law; but it is presumed the ordinary might enforce his ecclesiastical rights as before (see Gibson, 454). The coroner may order a body to be taken up for the purpose of inquiry (*Jer. Cor.* 28); but to disinter bodies for dissection is indictable (*Reg. v. Gilles*, R. & R. 366). The powers conferred under a faculty for the removal of bodies must not be exceeded; the court will issue a monition for the re-interment of remains so disinterred without proper authority (*St. Pancras Vestry v. St. Martin's*, 6 Jur. N. S. 540). It is a misdemeanor at common law to remove without lawful authority a corpse from a grave in a burying ground belonging to a congregation of protestant dissenters; and it is no defence to such a charge that the motive of the person removing the body was pious and laudable. See case *Reg. v. Sharpe*, Appendix, p. 217.

who shall remove any such body or remains, contrary to this enactment, or who shall neglect to observe the precautions prescribed as the condition of the licence for removal, shall, on summary conviction before any two justices of the peace, forfeit and pay for every such offence a sum not exceeding ten pounds.—20 & 21 Vict. c. 81, s. 25.

APPENDIX.

STATUTES.

59 Geo. 3, c. 12, ss. 8, 9, 10, 14, 15, 16 (a).

An Act to amend the Laws for the Relief of the Poor.
[31st March, 1819.]

59 GEO. 3, c.
12.

VIII. AND be it further enacted, that in any parish not having a workhouse for the poor thereof, or where the workhouse shall be found insufficient or inconvenient, it shall be lawful for the churchwardens and overseers of the poor, by the direction of the inhabitants in vestry assembled, to erect and build in such parish a suitable workhouse, or to alter and enlarge any messuage or tenement belonging to such parish for that purpose, and to purchase or take on lease any ground within the parish for the purpose of such building, or for enlarging any such other messuage or tenement belonging to such parish for that purpose, or such churchwardens and overseers may and they are hereby authorised to add to and enlarge any such insufficient workhouse, as the inhabitants of the parish in vestry shall think fit and direct.

Power to
build or en-
large work-
houses.

IX. And whereas it would be advisable to enable parishes to sell and dispose of their present workhouses, or any other houses or tenements belonging to such parishes, in cases where the same are insufficient and incapable of being enlarged or used as workhouses, and to apply the produce thereof in aid of building new workhouses; be it therefore enacted, that it shall and may be lawful for the churchwardens and overseers of the poor of any parish, and they are hereby authorised, by the direction of the inhabitants in vestry assembled, and with the consent of two justices, to be certified under their hands, to sell and dispose of any workhouse, or any other houses or tenements belonging to such parish, which shall be found to be insufficient or unfit for the purpose, with the site thereof, and the outhouses, offices, yards, and gardens thereto belonging, for the best price and prices that can be reasonably obtained, and to convey and assure the same to the purchaser

Workhouses
insufficient
may be sold.

(a) Sec 15 & 16 Vict. c. 85, s. 42, pp. 92, 93.

59 GEO. 3, C.
12.

or purchasers thereof, his, her, or their heirs and assigns, or as he, she, or they shall direct, and to apply the produce of such sale, after deducting the reasonable expenses thereof, towards the purchase or building of a new workhouse, or in or towards the payment of any money to be borrowed under the authority of this act, as the inhabitants in vestry shall direct.

Where no
poorhouse,
&c., can be
procured in
the parish,
adjoining
parish may
be resorted
to.

X. And whereas there may be parishes in which no sufficient poorhouse or workhouse can be procured for the accommodation of the poor thereof; be it further enacted, that it shall and may be lawful for the churchwardens and overseers of the poor of every such parish, by the direction of the inhabitants thereof in vestry assembled, to purchase or hire any suitable and convenient house or houses, building or buildings, for that purpose, in any adjoining parish, with the consent of two or more justices, such consent to be written upon or annexed to the agreement for purchasing or hiring such house or houses, building or buildings: Provided always, that no such house or building shall be situate more than three miles from the parish for which the same shall be purchased or hired.

Limiting
the amount
to be raised
for build-
ings and
the pur-
chase of
lands, &c.

XIV. Provided, and be it further enacted, that no sum exceeding the amount of a rate or assessment at one shilling in the pound upon the annual value of the property in any parish assessable to the rates for the relief of the poor shall be raised, expended, or applied, in any one year, in purchasing, building, and repairing any buildings or land by this act authorised to be purchased, taken, built, or repaired, and in fitting up, preparing, and furnishing such buildings, and in stocking such land, or for any one or more of such purposes or objects, unless the major part of the inhabitants and occupiers assessed to the relief of the poor, in vestry assembled, shall consent thereto, nor until two-third parts in value of all the inhabitants and occupiers so assessed as aforesaid (whether present in vestry or not) shall have also signed their consent thereto in the vestry or parish book.

Power to
raise further
sums by
loans or by
the sale of
annuities.

XV. And be it further enacted, that in every case where the inhabitants of any parish shall, in manner aforesaid, consent that a greater sum than the amount of a rate or assessment of one shilling in the pound will raise shall be expended in one year for all or any of such purposes and objects, it shall be lawful for the churchwardens and overseers of the poor of such parish, with the consent of such majority as aforesaid of the inhabitants and occupiers thereof, to be given and signed in the manner hereinbefore directed, (after the rate or rates at or amounting to one shilling in the pound shall have been actually levied and applied for such purposes or some of them), to raise any additional sum or sums by loan or by sale of an annuity or of annuities on any life or lives not being under the age of fifty years respectively, or for any certain term not exceeding fifteen years, so as the whole sum to be raised for all

59 GEO. 3, c
12.

[Sic.]

Future rates
charged
with loans
and annui-
ties.No greater
rate than
one shilling
in the pound
shall be
charged on
future rates,
unless with
consent of
two-thirds
in value of
the proprie-
tors of
premises.

or any of such purposes by loan and by the sale of annuities, or by either of such means, shall not be more than five shillings in the pound of or upon the true annual value of the property which shall in such parish be assessed to the poor's rates of every proposal for any such annuity being first stated to and approved of the inhabitants and occupiers of such parish in vestry assembled); and the churchwardens and overseers of the poor shall and they are hereby authorised, in the names and on the behalf of the inhabitants of the parish, to sign and execute securities for the money which shall be so borrowed, and for the annuities to be so granted, and by every such security to charge the produce of the future rates to be made for the relief of the poor of every such parish with the repayment of the principal sum which shall have been so borrowed, and the interest thereof, or with the payment of the annuity thereby granted (as the case may be), at and upon the days and times and in such manner and proportions as in and by the security for every such loan and annuity respectively shall be appointed and expressed for the payment thereof; and the money to be raised by such future rates shall be subject and liable to the payment of every such loan and the interest thereof, and of every such annuity accordingly.

XVI. Provided nevertheless, and be it enacted, that no greater sum in the whole than the amount of a rate or assessment at one shilling in the pound shall in any parish be charged upon the future rates thereof, unless two-third parts in value of the proprietors of messuages, lands, and tenements within such parish, (whether for estates of freehold or copyhold, or by virtue of leases for terms of not less than fifteen years absolute or determinable upon a life or lives) shall have consented to raise the money for which the charge or security shall purport to be made, such consents to be given by writing under the hands of all persons and corporations sole, and the consent of every corporation aggregate under the hand of the president, head, or chief member thereof for the time being, and the consents of females covert, minors, insane persons, and persons out of the kingdom, by and under the hands of their respective husbands, guardians, committees, trustees, attornies, or agents, who are respectively authorised to give such consents; and the consent of the major part of the trustees for any charitable or other purpose shall be sufficient in respect of the trust estates.

8 VICT. c. 18 (a).

8 VICT. c.
18.

An Act for consolidating in One Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a public Nature.

[8th May, 1845.]

Act to apply
to all under-
takings
authorised
by acts
hereafter to
be passed.

Interpreta-
tions in this
act:
"Special
act:"

"Pre-
scribed:"

"The
works:"

"Promoters
of the un-
dertaking."

WHEREAS it is expedient to comprise in one general act sundry provisions usually introduced into acts of parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That this act shall apply to every undertaking authorised by any act which shall hereafter be passed, and which shall authorise the purchase or taking of lands for such undertaking, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed together therewith as forming one act

And with respect to the construction of this act and of acts to be incorporated therewith, be it enacted as follows:

II. The expression "the special act," used in this act, shall be construed to mean any act which shall be hereafter passed which shall authorise the taking of lands for the undertaking to which the same relates, and with which this act shall be so incorporated as aforesaid; and the word "prescribed," used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used; and the expression "the works" or "the undertaking" shall mean the works or undertaking, of whatever nature, which shall by the special act be authorised to be executed; and the expression "the promoters of the undertaking" shall mean the parties, whether

company, undertakers, commissioners, trustees, corporations, or private persons, by the special act empowered to execute such works or undertaking.

S VICT c.
18.

III. The following words and expressions, both in this and the special act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

Interpreta-
tions in this
and the
special act.

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number :

Number :

Words importing the masculine gender only shall include females :

Gender :

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure :

"Lands :"

The word "lease" shall include an agreement for a lease :

"Lease :"

The word "month" shall mean calendar month :

"Month ;"

The expression "superior courts" shall mean her Majesty's superior Courts of Record at Westminster or Dublin, as the case may require :

"Superior
courts :"

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath :

"Oath :"

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town :

"County

The word "sheriff" shall include under sheriff, or other legally competent deputy : and where any matter in relation to any lands is required to be done by any sheriff or by any clerk of the peace, the expression "the sheriff," or

"The she-
riff :"

the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate : and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate :

"The clerk
of the
peace :

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter ; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any

"Justices

8 VICT. c.
18.

"Two justices."

part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together:

Where, under the provisions of this or the special act, or any act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special act, would be enabled to sell and convey lands to the promoters of the undertaking:

"Owner:"

"The bank:"

The expression "the bank" shall mean the Bank of England where the same shall relate to monies to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to monies to be paid or deposited in respect of land situate in Ireland.

Short title of the act.

IV. And be it enacted, that in citing this act in other acts of parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845."

Purchase of lands by agreement.

And with respect to the purchase of lands by agreement, be it enacted as follows:

Power to purchase lands by agreement.

VI. Subject to the provisions of this and the special act, it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special act authorized to be taken, and which shall be required for the purposes of such act, and with all parties having any estate or interest in such lands, or by this or the special act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

Parties under disability enabled to sell and convey.

VII. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for

life, or for lives and years, or for years, or any less interest ; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves, and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians on behalf of their wards, and as to such committees on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the special act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this and the special act if they had respectively been under no disability.

VIII. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor, pursuant to the provisions of this or the special act, or any act incorporated therewith, and the power to release lands from any rent-charge or incumbrance, and to agree for the apportionment of any such rent-charge or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

IX. The purchase-money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors, if they agree, or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration

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18.

Parties.
under dis-
ability to
exercise
other
powers.

Amount of
compensa-
tion in case
of parties
under disa-
bility to be
ascertained
by valuation
and paid
into the
bank.

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18.

Where ven-
dor abso-
lutely en-
titled, lands
may be sold
on chief
rents.

Payment of
rents to be
charged on
tolls.

Municipal
corporations
not to sell
without the
approbation
of the trea-
sury.

Application
of compen-
sation.

Purchase-
money pay-
able to par-
ties under
disability
amounting
to 200*l.* to be
deposited in
the bank.

in writing, subscribed by them or him, of the correctness thereof; and all such purchase-money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned.

X. It shall be lawful for any person seised in fee of or entitled to dispose of absolutely for his own benefit any lands authorized to be purchased for the purposes of the special act to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rent-charge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum.

XI. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable: and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rents shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

XV. Nothing in this or the special act contained shall enable any municipal corporation to sell for the purposes of the special act, without the approbation of the commissioners of her Majesty's treasury of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special act, other than such lands as the company are by the powers of this or the special act empowered to purchase or take compulsorily.

And with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:

LXIX. If the purchase-money or compensation which shall be payable in respect of any lands or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor, or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank, in the name and with the privity of the Ac-

countant-general of the Court of Chancery in England if the same relate to lands in England or Wales, or the Accountant-general of the Court of Exchequer in Ireland if the same relate to lands in Ireland, to be placed to the account thereof of such Accountant-general ex parte the promoters of the undertaking (describing them by their proper name), in the matter of the special act (citing it), pursuant to the method prescribed by any act for the time being in force for regulating monies paid into the said courts; and such monies shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,)

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18.

In the purchase or redemption of the land-tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or

Application
of monies
deposited.

In the purchase of other lands, to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled to such money.

LXX. Such money may be so applied as aforesaid upon an order of the Court of Chancery in England or the Court of Exchequer in Ireland, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-general in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in government or real securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Order for
application
and invest-
ment mean-
while.

LXXI. If the purchase-money or compensation shall not amount to the sum of two hundred pounds and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy,

Sums from
20*l.* to 200*l.*
to be depo-
sited or paid
to trustees.

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18.

or other incapacity of the parties entitled to such monies, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the monies shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the court for that purpose.

Sums not
exceeding
20*l.* to be
paid to
parties.

LXXII. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiocy, lunacy, or other incapacity of any such parties, then such money shall be paid for their use to the respective husbands, guardians, committees, or trustees of such persons.

All sums
payable
under con-
tract with
persons not
absolutely
entitled to
be paid into
bank.

LXXIII. All sums of money exceeding twenty pounds which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands, under a contract or agreement with any person who shall not be entitled to dispose of such lands or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorising the taking of such lands, but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: Provided always, that it shall be in the discretion of the Court of Chancery in England or the Court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life or for any other partial or qualified estate, for his own use, a portion of the sum so paid, into the bank or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Court of
chancery
may direct
application
of money in
respect of

LXXIV. Where any purchase-money or compensation paid into the bank under the provisions of this or the special act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion

dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

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18.

leases or
reversions
as they may
think just.

LXXV. Upon deposit in the bank in manner hereinbefore provided of the purchase-money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, the owner of such lands, including in such term all parties by this act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made; and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party as between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase-money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices, as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Upon de-
posit being
made the
owners of
the lands to
convey, or
in default
the lands to
vest in the
promoters
of the under-
taking,
upon deed
poll being
executed.

LXXVI. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase-money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of

Where par-
ties refuse
to convey,
or do not
show title,
or cannot be
found, the

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18.

purchase-
money to be
deposited.

Upon de-
posit being
made a
receipt to be
given, and
the lands to
vest upon a
deed poll
being exe-
cuted.

Application
of monies so
deposited.

Party in
possession

the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase-money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the Accountant-general of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them, so far as the promoters of the undertaking can do), subject to the control and disposition of the said court.

LXXVII. Upon any such deposit of money as last aforesaid being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase-money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

LXXVIII. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England or the Court of Exchequer in Ireland may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

LXXIX. If any question arise respecting the title to the lands in respect whereof such monies shall have been so paid

or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interests of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

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18.

to be deemed
the owner.

LXXX. In all cases of monies deposited in the bank under the provisions of this or the special act, or any act incorporated therewith, except where such monies shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such monies in government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of court of the principal of such monies or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for reinvestment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland that it is for the benefit of the parties interested in the said monies that the same should be invested in the purchase of lands in different sums, and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking.

Costs in
cases of
money de-
posited.

And with respect to the conveyances of lands, be it enacted as follows:

Conveyances.

LXXXI. Conveyances of lands to be purchased under the provisions of this or the special act, or any act incorporated therewith, may be according to the forms in the Schedules

Form of con-
veyances.

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18.

(A) and (B) respectively to this act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form in which the promoters of the undertaking may think fit, and all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration or by construction of law on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged they shall in equity afford the same protection as if they had been kept on foot and assigned to a trustee for the promoters of the undertaking, to attend the reversion and inheritance.

Costs of conveyances.

LXXXII. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

Taxation of costs of conveyances.

LXXXIII. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing-masters of the Court of Chancery, or by a Master in Chancery in Ireland, upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

Entry on lands.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

LXXXIV. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase-money or compensation agreed or awarded to be paid to such parties respectively for their respective interest therein: Provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

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18.

Payment of
price to be
made pre-
vious to
entry,
except to
survey, &c.

LXXXV. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made or verdict given for the purchase-money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the bank by way of security, as hereinafter mentioned, either the amount of purchase-money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond under the common seal of the promoters, if they be a corporation, or if they be not a corporation, under the hands and seals of the said promoters or any two of them, with two sufficient sureties, to be approved of by two justices, in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase-money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the land so entered upon, together with interest thereon at the rate of five pounds per centum per annum from the time of entering on such lands until such purchase-money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as

Promoters
to be
allowed to
enter on
lands before
purchase, on
making de-
posit by way
of security,
and giving
bond.

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18.

aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase-money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special act.

Upon deposit being made, cashier to give receipt.

LXXXVI. The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity of the Accountant-general of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the land so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

Deposit to remain as a security, and to be applied under the direction of the court.

LXXXVII. The money so deposited as last aforesaid shall remain in the bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the conditions of the bond to be given by the promoters of the undertaking, as hercinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities or government securities, and accumulated; and upon the condition of such bond being fully performed it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

The company may pay the deposit money into the bank by way of security during the time that the office of the accountant-general is closed.

LXXXVIII. If at any time the company be unable, by reason of the closing of the office of the Accountant-general of the Court of Chancery in England or the Court of Exchequer in Ireland, to obtain his authority in respect of the payment of any sum of money so authorized to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank, to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the governor and company of the bank in that behalf, request, and upon any such payment being made

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18.

the cashier of the bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said Accountant-general's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant-general, and upon production of such direction at the bank of England the money so previously paid in shall be placed to the credit of the said Accountant-general accordingly, and the receipt for the said payment to be given to the party making the same in the usual way, for the purpose of being filed at the report office.

LXXXIX. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

XC. On the trial of any action for any such penalty as aforesaid, the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

XCI. If in any case in which, according to the provisions of this or the special act, or any act incorporated therewith, the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purposes of the undertaking the owner or occupier of any such lands or

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase money.

Decision of justices not conclusive as to the right of the promoters.

Proceedings in case of refusal to deliver possession of lands.

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15.

any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

*Lands in
mortgage.*

And with respect to lands subject to mortgage, be it enacted as follows :

Power to
redeem
mortgages.

CVIII. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice ; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall

convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

8 VICT. C.
18.

Deposit of
mortgage
money on
refusal to
accept.

CIX. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank in the manner provided by this act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

CX. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such land, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Sum to be
paid when
mortgage
exceeds the
value of the
lands

CXI. If upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit,

Deposit of
money
when re-
fused on
tender.

5 VICT. C.
18.

to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Sum to be
paid where
part only of
mortgaged
lands taken.

CXII. If a part only of any such mortgaged lands be required for the purposes of the special act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be indorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of
money when
refused on
tender.

CXIII. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this act in the case of monies required to be deposited in such bank, and

such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

CXIV. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the reinvestment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on reinvesting the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.

S VICT. C.
18.

Compensation to be made in certain cases, if mortgage paid off before the stipulated time.

8 VICT. C.
18.

Leases.

Where part
only of
lands under
lease taken,
the rent to
be appor-
tioned.

And with respect to lands subject to leases, be it enacted as follows :

CXIX. If any lands shall be comprised in a lease for a term of years unexpired, part only of which lands shall be required for the purposes of the special act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands ; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part ; and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices ; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special act ; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease ; and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Tenants to
be compen-
sated.

CXX. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Compensa-
tion to be
made to
tenants at
will, &c.

CXXI. If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an in-coming tenant, and for any loss or injury he may sustain, or, if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him or otherwise injuriously affecting the same ; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same ; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special act.

CXXII. If any party, having a greater interest than as

tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

8 VICT. c.
18.

Where greater interest claimed than from year to year, lease to be produced.

10 VICT. c. 16 (a).

An Act for consolidating in one Act certain Provisions usually contained in Acts with respect to the Constitution and Regulation of Bodies of Commissioners appointed for carrying on Undertakings of a Public Nature.

10 VICT. c.
16.

[23rd April, 1847.]

WHEREAS it is expedient to comprise in one act sundry provisions usually contained in Acts of Parliament authorising the execution of undertakings of a public nature by bodies of commissioners, trustees, or other persons, not being joint-stock companies, and that as well for avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that this act shall extend only to such undertakings or commissioners as shall be authorised or constituted by any act of parliament hereafter to be passed, which shall declare that this act shall be incorporated therewith; and all the clauses of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the commissioners constituted by such act and to the undertaking for carrying on which such commissioners shall be constituted, so far as the same shall be applicable thereto respectively; and such clauses, with the clauses of every other act which shall be incorporated therewith, shall, save as aforesaid, form part of such act, and be construed therewith as forming one act.

Extent of
act.

And with respect to the construction of this act, and any act incorporated therewith, be it enacted as follows:

Interpretations in this
act:

II. The expression "the special act" used in this act shall be construed to mean any act which shall be hereafter passed, constituting a body of commissioners as hereinafter defined for

"The special act:"

(a) See 20 & 21 Vict. c. 81, s. 19, p. 55.

- 10 VICT. C.
16. the purpose of carrying on any undertaking, and with which this act shall be incorporated; and the word "prescribed" used in this act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act; and the sentence in which such word occurs shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used; and the expression "the undertaking" shall mean the undertaking or works, of whatever nature, which shall by the special act be authorised to be executed or carried on; and the expression "the commissioners" shall mean the commissioners, trustees, undertakers, or other persons or body corporate constituted by the special act, or thereby entrusted with powers for executing the undertaking.
- "Pre-
scribed:"
- "The un-
dertaking"
- "The com-
mission-
ers:"
- Interpreta-
tions in this
and the spe-
cial act:
- III. The following words and expressions, both in this and the special act, and any act incorporated therewith, shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say,)
- Number: Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number:
- Gender: Words importing the masculine gender only shall include females:
- "Person:" The word "person" shall include a corporation, whether aggregate or sole:
- "Lands:" The word "lands" shall extend to messuages, lands, tenements, and hereditaments or heritages of any tenure:
- "Month:" The word "month" shall mean calendar month:
- "Superior
courts:" The expression "superior courts," where the matter submitted to the cognisance of the court arises in England or Ireland, shall mean Her Majesty's superior courts of record at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the county palatine of Lancaster and the Court of Pleas of the county of Durham:
- "Oath:" The word "oath" shall include affirmation in the case of quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:
- "County:" The word "county" shall include riding or other division of a county having a separate commission of the peace, and it shall also include county of a city or county of a town:
- "Justice:" The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognisance of any such justice arises; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together.
- "Two jus-
tices."

The expression "quarter sessions" shall mean quarter sessions as defined in the special act; and if such expression be not there defined, it shall mean the general or quarter sessions of the peace which shall be held at the place nearest to the undertaking for the county or place in which the undertaking, or the principal office thereof, is situate, or for some division of such county having a separate commission of the peace :

10 VICT. C.
16.

"Quarter sessions:"

The expression "the clerk" shall mean the clerk of the commissioners, and shall include the word "secretary."

"Clerk:"

The expression "the town" shall mean the town or district named in the special act within which the powers of the commissioners are to be exercised.

"The town."

And with respect to citing this act or any part thereof, be it enacted as follows :

IV. In citing this act in other acts of parliament, and in legal instruments, it shall be sufficient to use the expression "The Commissioners Clauses Act," 1847.

Short title of this act.

V. For the purpose of incorporating part only of this act with any act of parliament hereafter to be passed, it shall be enough to describe the clauses of this act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this act with the exception of the clauses so described, shall be incorporated with such act; and thereupon all the clauses of this act so incorporated shall, save so far as they are expressly varied or excepted by such act, form part of such act, and such act shall be construed as if such clauses were set forth therein with reference to the matter to which such act relates.

Form in which portions of this act may be incorporated with other act.

And with respect to the mortgages to be executed by the commissioners, be it enacted as follows (a) :

Mortgages.

LXXV. Every mortgage or assignation in security of rates or other property authorised to be made under the provisions of this or the special act shall be by deed duly stamped, in which the consideration shall be truly stated; and every such deed shall be under the common seal of the commissioners if they be a body corporate, and may be according to the form in the schedule (B) to this act annexed (b), or to the like effect;

Form of mortgage.

(a) Words which refer to Scotland, and are inapplicable, are omitted.

(b) The Form of Mortgage given in the schedule is as follows :

By virtue of [here name the special act], we [here name the corporation, if the commissioners be incorporated] appointed in pursuance of the said act, in consideration of the sum of _____ paid to the treasurer to the said commissioners by A. B. of _____ for the purposes of the said act, do grant and assign unto the said A. B., his executors, administrators, and assigns, such proportion of the rates, rents, profits, and other monies arising or accruing by virtue of the said act from [here describe the rates or other property proposed to be mortgaged] as the said sum of _____ doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates, rents, profits, or monies, to hold to the said A. B., his executors, administrators, and assigns, from this day until the said sum of _____

10 VICT. c.
16.

and the respective mortgagees or assignees in security shall be entitled one with another to their respective proportions of the rates and assessments or other property comprised in such mortgages or assignments respectively, according to the respective sums in such mortgages or assignments mentioned to be advanced by such mortgagees or assignees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of the priority of advancing such monies, or of the dates of any such mortgages or assignments respectively.

Register of
mortgages
to be kept
and to be
open to in-
spection.

LXXVI. A register of mortgages or assignments in security shall be kept by the clerk to the commissioners, and where by the special act the commissioners are authorised or required to raise separate sums on separate rates or other property, a separate register shall be kept for each class of mortgages or assignments in security, and within fourteen days after the date of any mortgage or assignment in security an entry or memorial of the number and date thereof, and of the names of the parties thereto, with their proper additions, shall be made in the proper register, and every such register may be perused at all reasonable times by any person interested in any such mortgage or assignment in security without fee or reward.

Transfers of
mortgages.

LXXVII. Any person entitled to any such mortgage or assignment may transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be duly stated; and every such transfer may be according to the form in the schedule (C) to this act annexed (a), or to the like effect.

Register of
transfers to
be kept.

LXXVIII. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the clerk to the commissioners, and thereupon such clerk shall cause an entry or memorial thereof to be made, in the same manner as in the case of the original mortgage or assignment in security, and for such entry the clerk may demand a sum not exceeding five shillings; and

with interest at per centum per annum for the same, shall be fully paid and satisfied: the principal sum to be repaid at the end of years from the date hereof [in case any period be agreed upon for that purpose]. Given under our corporate seal [or, in witness whereof we have hereunto set our hands and seals], this day of , one thousand eight hundred and .

(a) The Form of Transfer of Mortgage is as follows:

I, A. B., of in consideration of the sum of paid to me by C. D. of do hereby transfer to the said C. D., his executors, administrators, and assigns, a certain mortgage, number made by "the commissioners for executing the [here name the special act]" to bearing date the day of for securing the sum of and interest [or, if such transfer be by indorsement, the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the rates, rents, profits, or other monies thereby assigned. In witness whereof I have hereunto set my hand and seal this day of , one thousand eight hundred and .

after such entry every such transfer shall entitle the transferee, his executors, administrators, or assigns, to the full benefit of the original mortgage or assignation in security, and the principal and interest thereby secured; and such transferee may in like manner assign or transfer the same again, *toties quoties*; and it shall not be in the power of any person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, to make void, release, or discharge the mortgage or assignation so transferred, or any money thereby secured.

10 VICT. c.
16.

LXXIX. Unless otherwise provided by any mortgage or assignation in security, the interest of the money borrowed thereupon shall be paid half-yearly to the several parties entitled thereto.

Interest on
mortgages
to be paid
half-yearly.

LXXX. If the commissioners can at any time borrow or take up any sum of money at a lower rate of interest than any securities given by them and then be in force shall bear, they may borrow such sum at such lower rate as aforesaid, in order to pay off and discharge the securities bearing such higher rate of interest, and may charge the rates and other property which they may be authorised to mortgage or assign in security under this or the special act, or any part thereof, with payment of such sum and such lower rate of interest, in such manner and subject to such regulations as are herein contained with respect to other monies borrowed on mortgage or assignation in security.

Power to
borrow
money at a
(sic)
lower rate of
interest, to
pay off secu-
rities at a
higher rate.

LXXXI. The commissioners may, if they think proper, fix a period for the repayment of all principal monies borrowed under the provisions of this or the special act, with the interest thereof, and in such case the commissioners shall cause such period to be inserted in the mortgage deed or assignation in security; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to receive such principal money and interest, and if no other place of payment be inserted in such deed such principal and interest shall be payable at the office of the commissioners.

Repayment
of money
borrowed at
a time and
place agreed
upon.

LXXXII. If no time be fixed in the mortgage deed or assignation in security for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration or at any time after the expiration of twelve months from the date of such deed, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose, and in the like case the commissioners may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or creditor shall be delivered to the clerk or left at the office of the commissioners, and if given by the commissioners shall be given either personally to such mortgagee or creditor, or left at his

Repayment
of money
borrowed
when no
time or
place has
been agreed
upon.

10 Vict. c.
16.

Interest to
cease on ex-
piration of
notice to
pay off a
mortgage
debt.

Monies
borrowed on
security of
rates to be
paid off in a
limited
period.

Mode of
paying off
mortgages.

Account
books to be
open to the
inspection
of mort-
gagees.

residence, or if such mortgagee or creditor be unknown to the commissioners, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the London Gazette.

LXXXIII. If the commissioners shall have given notice of their intention to pay off any such mortgage or assignation in security at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable thereon, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the commissioners fail to pay the principal and interest due at the expiration of such notice on such mortgage or assignation in security.

LXXXIV. In order to discharge the principal money borrowed as aforesaid on security of any of the rates, the commissioners shall every year appropriate and set apart out of such rates respectively a sum equal to the prescribed part, as a sinking fund to be applied in paying off the respective principal monies so borrowed, and shall from time to time cause such sinking fund to be invested in the purchase of exchequer bills or other government securities, and to be increased by accumulation in the way of compound interest or otherwise, until the same respectively shall be of sufficient amount to pay off the principal debts respectively to which such sinking fund shall be applicable, or some part thereof, which the commissioners shall think ought then to be paid off, at which time the same shall be so applied in paying off the same in manner hereinafter mentioned.

LXXXV. Whenever the commissioners shall be enabled to pay off one or more of the mortgages or assignations in security which shall be then payable, and shall not be able to pay off the whole of the same class, they shall decide the order in which they shall be paid off by lot among the class to which such one or more of the mortgages or assignations in security belong, and shall cause a notice, signed by their clerk, to be given to the persons entitled to the money to be paid off, pursuant to such lot, and such notice shall express the principal sum proposed to be paid off, and that the same will be paid, together with the interest due thereon, at a place to be specified, at the expiration of six months from the date of giving such notice.

LXXXVIII. The books of account of the commissioners shall be open at all seasonable times to the inspection of the respective mortgagees or assignees in security of the commissioners, with liberty to take extracts therefrom without fee or reward.

10 & 11 VICT. CAP. 65 (a).

An Act for consolidating in one Act certain provisions usually contained in Acts authorizing the making of Cemeteries. 10 & 11 VICT.
c. 65.
[9th July, 1847.]

WHEREAS it is expedient to comprise in one act sundry provisions usually contained in acts of parliament authorizing the making of cemeteries, and that as well for avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for insuring greater uniformity in the provisions themselves: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that this act shall extend only to such cemeteries as shall be authorised by any act of parliament hereafter to be passed which shall declare that this act shall be incorporated therewith, and all the clauses of this act, save so far as they shall be expressly varied or excepted in any such act, shall apply to the cemetery authorized thereby, so far as they are applicable to such cemetery, and shall, with the clauses of every other act incorporated therewith, form part of such act, and be construed therewith as forming one act.

Extent of act.

And with respect to the construction of this act and any act incorporated therewith, be it enacted as follows:

Interpretations in this act,—

II. The expression "the special act" used in this act shall be construed to mean any act which shall be hereafter passed authorizing the making of a cemetery, and with which this act shall be incorporated: and the expression "the company" shall mean the persons by the special act authorised to construct the cemetery.

"Special act."
"Company."

LVIII. Every person who shall wilfully destroy or injure any building, wall, or fence belonging to the cemetery, or destroy or injure any tree or plant therein, or who shall daub or disfigure any wall thereof, or put up any bill therein or on any wall thereof, or wilfully destroy, injure, or deface any monument, tablet, inscription, or gravestone within the cemetery, or do any other wilful damage therein, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Penalty for damaging the cemetery.

LIX. Every person who shall play at any game or sport, or discharge fire-arms, save at a military funeral, in the cemetery, or who shall wilfully and unlawfully disturb any persons assembled in the cemetery for the purpose of burying any body therein, or who shall commit any nuisance within the cemetery, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Penalty on persons committing nuisances in the cemetery.

LXII. The clauses of the Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially

8 & 9 Vict.
c. 20, incor-

10 & 11 VICT.
c. 65.

porated as to
damages,
&c.

provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special act; and such clauses shall apply to the cemetery and to the company respectively (a).

15 & 16 VICT. CAP. 85.

5 & 16 VICT.
c. 85.

An Act to amend the laws concerning the Burial of the Dead in the Metropolis. [1st July, 1852.]

13 & 14 VICT.
c. 52.

WHEREAS it is expedient to repeal "The Metropolitan Interments Act, 1850," and to make such other provision as hereinafter mentioned in relation to interments in and near the metropolis: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

13 & 14 VICT.
c. 52, re-
pealed, and
her Majesty
may con-
tinue addi-
tional mem-
ber of board
therein
authorised.

I. The said act shall be repealed: Provided always, that it shall be lawful for her Majesty to continue during the continuance of the General Board of Health the appointment of the additional member of such board authorized by the said act, and the salary of such member, fixed as in the said act mentioned, shall be paid as by section seven of the Public Health Act, 1848, is directed concerning the salaries therein mentioned (b).

Onrepresent-
ation of
secretary of
state, her
Majesty in
council may
order dis-
continuance
of burials in
any part of
the metro-
polis.

II. In case it appear to her Majesty in council, upon the representation of one of her Majesty's principal secretaries of state, that for the protection of the public health burials in any part or parts of the metropolis, or in any burial grounds or places of burial in the metropolis, should be wholly discontinued, or should be discontinued subject to any exception or qualification, it shall be lawful for her Majesty, by and with the advice of her privy council, to order that after a time mentioned in the order burials in such part or parts of the metropolis or in such burial grounds or places of burial shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and so from time to time as circumstances may require: provided that notice of such representation, and of the time when it shall please her Majesty to order the same to be taken into consideration by the privy council, shall be published in the London Gazette, and shall be affixed on the doors of the churches or chapels of the parishes in which any burial grounds or places of burial affected by such representation shall be situate, or on some other conspicuous

(a) See note, p. 89.

(b) This proviso was repealed by the General Board of Health Continuance Act of 1854.

places within the part or parts of the metropolis affected by such representation, one calendar month, or where any order made under "The Nuisances Removal and Diseases Prevention Act, 1848," directing the provisions of that act for the prevention of epidemic, endemic, and contagious diseases to be put in force, is in force within such part or parts, then seven days at the least before such representation is so considered: Provided always, that no such representation shall be made in relation to the burial ground of any parish until ten days' previous notice of the intention to make such representation shall have been given to the incumbent and the vestry clerk of such parish.

15 & 16 VICT.
c. 85.

III. No such order in council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order; and nothing in this act shall prevent the burial in any such burial ground in which for the time being interment is not required to be discontinued of the bodies of such people and persons respectively; and no such order in council as aforesaid shall be deemed to extend to any non-parochial burial ground being the property of any private person, unless the same be expressly mentioned in such order.

Order not to extend to burial grounds of Quakers or Jews unless expressly included.

IV. It shall not be lawful, after the time mentioned in any such order in council for the discontinuance of burials, to bury the dead in any church, chapel, churchyard, or burial place, or elsewhere, within the part or parts of the metropolis or in the burial grounds or places of burial (as the case may be) in which burials have by any such order been ordered to be discontinued, except as in this act or in such order excepted; and every person who shall, after such time as aforesaid, bury any body, or in anywise act or assist in the burial of any body, contrary to this enactment, shall be guilty of a misdemeanor (a).

Burial not to take place after order in council for discontinuance.

V. After the time from which burials in any place of burial of any parish are required under this act to be discontinued, the body of any parishioner or inhabitant of such parish shall not be buried in any burial ground within the metropolis belonging to any other parish within the metropolis, save where the body of any of the family or relatives of such parishioner or inhabitant has been interred in such burial ground, and the relatives or other persons having the care and direction of the funeral signify a desire that on that account the body of such parishioner or inhabitant should be there interred (such burial ground not being a burial ground in which burials have been ordered to be discontinued under this act), and save as herein otherwise provided: and every person having the care or control of any burial ground who knowingly authorizes or permits any burial therein contrary to this enactment shall be guilty of a misdemeanor.

Restriction as to place of burial of inhabitants of parishes the burial grounds whereof are closed.

(a) See note, p. 25.

15 & 16 VICT.
c. 85.

Saving of
certain
rights to
bury in
vaults, &c.

VI. Provided always, that notwithstanding any such order in council, where by virtue of any faculty legally granted, or by usage or otherwise, there is at the time of the passing of this act any right of interment in or under any church or chapel affected by such order, or in any vault of any such church or chapel, or of any churchyard or burial ground affected by such order, and where any exclusive right of interment in any such burial ground has been purchased or acquired before the passing of this act, it shall be lawful for one of her Majesty's principal secretaries of state from time to time, on application (a) being made to him, and on being satisfied that the exercise of such right will not be injurious to health, to grant licence for the exercise of such right during such time and subject to such conditions and restrictions as such secretary of state may think fit, but such licence shall not prejudice or in anywise affect the authority of the ordinary, or of any other person who, if this act had not been passed, might have prohibited or controlled interment under such right, nor dispense with any consent which would have been required, nor otherwise give to such right any greater force or effect than the same would have had if this act had not been passed.

Saving as to
cemetaries
in schedule
(B) and new
burial
grounds
hereafter
approved of
by secretary
of state.

VII. The provisions of this act shall not extend to authorize the discontinuance of burials or to prevent the burial of the body of any person in any of the cemetaries mentioned in the Schedule (B) to this act, or in any burial ground or cemetery to be hereafter provided with the approval of one of her Majesty's principal secretaries of state, as herein mentioned.

Saving as to
St. Paul's
Cathedral
and West-
minster
Abbey.

VIII. Nothing in this act contained shall extend to prevent the interment in the cathedral church of St. Paul's, London, or in the collegiate church of St. Peter's Westminster, of the body of any person, where her Majesty, by any writing under her royal sign manual, shall signify her pleasure that the body be so interred.

New burial
grounds in
the metro-
polis to be
approved by
secretary of
state.

IX. No new burial ground or cemetery (parochial or non-parochial) shall be provided and used in the metropolis, or within two miles of any part thereof, without the previous approval of one of her Majesty's principal secretaries of state (b).

Church-
wardens
after order,
or at any
time upon
requisition
of ten rate-
payers, to
convene
vestry meet-

X. Upon the requisition in writing of ten or more rate-payers of any parish in the metropolis in which the place or places of burial shall appear to such ratepayers insufficient or dangerous to health (and whether any order in council in relation to any burial ground in such parish has or has not been made), the churchwardens or other persons to whom it belongs to convene meetings of the vestry (c) of such parish shall convene a meeting of the vestry, for the special purpose of determining whether a burial ground shall be provided under this

(a) See note, p. 27.

(b) See note, p. 33.

(c) See note, p. 34.

act for the parish (a); and public notice of such vestry meeting, and the place and hour of holding the same, and the special purpose thereof, shall be given in the usual manner in which notices of the meetings of the vestry are given, at least seven days before holding such vestry meeting (b); and if it be resolved by the vestry that a burial ground shall be provided under this act for the parish (c), a copy of such resolution, extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of her Majesty's principal secretaries of state (d).

15 & 16 Vict.
c 85.

ing, to
determine
whether a
burial
ground shall
be provided.

XI. In case of such resolution as aforesaid the vestry shall appoint not less than three nor more than nine persons, being ratepayers of the parish, to be the burial board of such parish, of whom one-third, or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly at such time as shall be from time to time fixed by the vestry, but shall be eligible for immediate reappointment: Provided always, that the incumbent of the parish shall be eligible to be appointed and reappointed from time to time as one of the members of the said board, although not a ratepayer of the parish (e); provided also, that any member of the board may at any time resign his office, on giving notice in writing to the churchwardens or persons to whom it belongs to convene meetings of the vestry.

In case
vestry agree
to provide
a burial
ground,
board to be
appointed.

Resignation
of members.

XII. Any vacancies in the board may be filled up by the vestry when and as the vestry may think fit.

Vacancies to
be filled up
by vestry.

XIII. The board shall meet at least once in every month at their office, or some other convenient place previously publicly notified, and the said board may meet at such other time as at any previous meeting shall be determined upon; and it shall be at all times competent for any two members of the board, by writing under their hands, to summon, with at least forty-eight hours notice, the board for any special purpose mentioned in such writing (f), and to meet at such time as shall be appointed therein.

Meetings of
the board.

XIV. At all meetings of the board any number not less than three members of such board shall be a sufficient number for transacting business, and for exercising all the powers of the board.

Quorum of
meetings of
the board.

XV. The board shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for the business of the board and for the purposes of their burial ground, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk,

Board may
appoint and
remove
officers, &c.

(a) See note, p. 34, and post, Form 1, p. 261.

(b) See post, Form 2, p. 261.

(c) See note (b), p. 36, and post, Form 3, p. 262.

(d) See post, Form 4, p. 263.

(e) See note (b), p. 37.

(f) See post, Form 5, p. 263.

15 & 16 VICT. officers, and servants, and, when necessary, may hire and rent
c. 85. a sufficient office for holding their meetings and transacting their business.

Minutes of proceedings of board to be entered in a book.

Board to keep accounts, which shall be open to inspection.

Penalty for refusing to allow inspection.

Auditors to be appointed yearly, who shall examine the accounts, and report to vestries.

Expenses to be paid out of the poor rates.

XVI. Entries of all proceedings of the board, with the names of the members who attend each meeting, shall be made in books to be provided and kept for that purpose, under the direction of the board, and shall be signed by the members present or any two of them; and all entries purporting to be so signed shall be received as evidence, without proof of any meeting of the board having been duly convened or held, or of the presence at any such meeting of the persons named in any such entry as being present thereat, or of such persons being members of the board, or of the signature of any person by whom any such entry purports to be signed, all which matters shall be presumed until the contrary be proved; and the board shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money are paid and such liabilities incurred.

XVII. All such books shall at all reasonable times be open to the examination of every member of such board, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same; and in case the members of such board, or any of them, or any of the officers or servants of such board having the custody of the said books, being thereunto reasonably requested, refuse to permit or do not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copies or extracts, every such member, officer, or servant so offending shall for every such offence, upon a summary conviction thereof before any justice of the peace, forfeit any sum not exceeding five pounds (*a*).

XVIII. The vestry shall yearly appoint two persons, not being members of the board, to be auditors of the accounts of the board (*b*), and at such time in the month of March in every year as the vestry shall appoint the board shall produce to the auditors their accounts, with sufficient vouchers for all monies received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry.

XIX. The expenses incurred or to be incurred by the burial board of any parish in carrying this act into execution shall be chargeable upon and paid out of the rates for the relief of the poor of such parish, the expenses to be so incurred for or on account of any parish in providing and laying out a burial

(*a*) For recovery of penalty, see note (*b*), p. 25.

(*b*) See note (*b*), p. 50.

ground under this act and building the necessary chapel or 15 & 16 Vict.
chapels thereon not to exceed such sum as the vestry shall c. 83.
authorize to be expended for such purpose; and the overseers
or other officers authorized to make and levy rates for the relief
of the poor in any parish shall, upon receipt of a certificate (a)
under the hands of such number of members of the burial board
as are authorized to exercise the powers of the board of the
sums required from time to time for defraying any such expenses
as aforesaid, pay such sums out of the rates for the relief of
the poor as the board shall direct.

XX. Provided always, that it shall be lawful for the board, with the sanction of the vestry and the approval of the commissioners of her Majesty's Treasury, to borrow any money required for providing and laying out any burial ground under this act and building a chapel or chapels thereon, or any of such purposes, and to charge the future poor rates of the parish with the payment of such money and interest thereon; provided that there shall be paid in every year, in addition to the interest of the money borrowed and unpaid, not less than one-twentieth of the principal sum borrowed, until the whole is discharged (b).

Power to borrow money, with sanction of vestry, and approval of the treasury.

XXI. The commissioners for carrying into execution an act of the session holden in the fourteenth and fifteenth years of her Majesty, chapter twenty-three, "to authorize for a further period the advance of money out of the consolidated fund to a limited amount for carrying on public works and fisheries and employment of the poor," and any act or acts amending or continuing the same, may from time to time make to the burial board of any parish for the purposes of this act any loan under the provisions of the recited act, or the several acts therein recited or referred to, upon security of the rates for the relief of the poor of the parish (c).

The public works loan commissioners may advance money for the purposes of this act.

XXII. The money raised for defraying such expenses, and the income arising from the burial ground provided for the parish, except fees payable to the incumbent, clerk, and sexton of the parish, and the other fees herein directed to be otherwise paid, shall be applied by the board in or towards defraying the expenses of such board under this act; and whenever, after repayment of all monies borrowed for the purposes of this act in or for any parish and the interest thereof, and after satisfying all the liabilities of the board with reference to the execution of this act in or for the parish, and providing such a balance as shall be deemed by the board sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus

Monies raised, and the income arising from burial ground, to be applied towards defraying expenses.

(a) See note (b), p. 50, and post, Form 6, p. 263.

(b) This last proviso is repealed by 20 & 21 Vict. c. 81, s. 18, sec. 180.

(c) See note, p. 51.

15 & 16 Vict.
c. 85.

Vestries of
parishes
may concur
in providing
a burial
ground for
the common
use of such
parishes.

money at the disposal of the board, they shall pay the same to the overseers, in aid of the rate for the relief of the poor of the parish (a).

XXIII. The vestries of any parishes which shall have respectively resolved to provide burial grounds under this act may concur in providing one burial ground for the common use of such parishes, in such manner, not inconsistent with the provisions of this act, as they shall mutually agree, and may agree as to the proportions in which the expenses of such burial ground shall be borne by such parishes, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the monies to be raised for the relief of the poor of the same respective parish accordingly; and according and subject to the terms which shall have been so agreed on, the burial boards appointed for such parishes respectively shall, for the purpose of providing and managing such one burial ground, and taking and holding land for the same, act as one joint burial board for all such parishes, and may have a joint office, clerk, and officers, and all the provisions of this act shall apply to such joint burial board accordingly; and the accounts and vouchers of such board shall be examined and reported on by the auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such board shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses.

Incorporation
of burial
boards.

XXIV. For the more easy execution of the purposes of this act the burial board of every parish appointed under this act shall be a body corporate, by the name of "The Burial Board for the Parish of _____, in the County of _____," and by that name shall have perpetual succession and a common seal, and shall sue and be sued, and have power and authority (without any licence in mortmain) to take, purchase, and hold land for the purposes of this act; and where the burial boards of two or more parishes act as and form one joint burial board for all such parishes for the purposes aforesaid, such joint board shall for such purposes only be a body corporate by the name of "The Burial Board for the Parishes of _____ and _____, in the County of _____," and by that name shall have perpetual succession and a common seal, and shall sue and be sued, and have power and authority as aforesaid to take, purchase, and hold land for the purposes of this act.

Board to
provide a
burial
ground,
which may
be within
or without
the parish.

XXV. Every burial board shall, with all convenient speed, proceed to provide a burial ground for the parish or parishes for which they are appointed to act, and to make arrangements for facilitating interments therein; and in providing such burial ground the board shall have reference to the convenience of access thereto from the parish or parishes for which the same is pro-

vided; and any such burial ground may be provided either within or without the limits of the parish, or all or any of the parishes, for which the same is provided; but no ground not already used as or appropriated for a cemetery shall be appropriated as a burial ground, or as an addition to a burial ground, under this act, nearer than two (a) hundred yards to any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house.

15 & 16 Vict.
c. 85.

XXVI. For the providing such burial ground it shall be lawful for the burial board, with the approval of the vestry or vestries of the parish or respective parishes, to contract for and purchase any lands for the purpose of forming a burial ground (b), or for making additions to any burial ground to be formed or purchased under this act, as such board may think fit, or to purchase from any company or persons entitled thereto any cemetery or cemeteries, or part or parts thereof, subject to the rights in vaults and graves, and other subsisting rights, which may have been previously granted therein: Provided always, that it shall be lawful for such board, in lieu of providing any such burial ground, to contract with any such company or persons entitled as aforesaid for the interment in such cemetery or cemeteries, and either in any allotted part of such cemetery or cemeteries or otherwise, and upon such terms as the burial board may think fit, of the bodies of persons who would have had rights of interment in the burial grounds of such parish or respective parishes.

Board may, with approval of vestry, purchase land of cemeteries.

XXVII. "The Lands Clauses Consolidation Act, 1845 (c)," except the provisions of that act "with respect to the purchase and taking of lands otherwise than by agreement," "with respect to the recovery of forfeitures, penalties, and costs," "with respect to lands acquired by the promoters of the undertaking under the provisions of the 'Lands Clauses Consolidation Act, 1845,' or the special act, or any act incorporated therewith, but which shall not be required for the purposes thereof," and "with respect to the provision to be made for affording access to the special act by all parties interested," shall be incorporated with this act; and for the purposes of this act the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean any such burial board.

Certain provisions of 8 & 9 Vict. c. 18, incorporated with this act.

XXVIII. It shall be lawful for any such board, with the approval of the vestry, to sell and dispose of any lands purchased by them under this act, or any part thereof, in which no interment shall have taken place, and which it may appear to the board may be properly sold or disposed of; and for completing and carrying any such sale into effect such board

Power to sell lands not wanted.

(a) Now "one," amended by 18 & 19 Vict. c. 128, s. 9 (post, p. 164) and 17 & 18 Vict. c. 87, s. 12, p. 157.

(b) See post, Form 10, p. 266.

(c) See note, p. 64, and clauses at length, p. 102.

15 & 16 Vict.
c. 85.

may make and execute a conveyance of the lands sold and disposed of as aforesaid unto the purchaser, or as he shall direct; and such conveyance shall be under the hands of at least two of the members of the board, and under the seal of the board (a); and the word "grant" in such conveyance shall have the same operation as by the said Lands Clauses Consolidation Act, 1845, is given to the same word in a conveyance of lands made by the promoters of the undertaking; and a receipt under the hands of two of the members of the board shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received; and the money to arise from such sale shall be applied to such of the purposes of this act as the board shall think fit.

Burial board may, with approval of vestry, &c., appropriate land belonging to parish.

XXIX. Provided always, that any burial board under this act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the poor law board, may from time to time appropriate for the purposes of a burial ground for such parish, either alone or jointly with any other parish or parishes, any land vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish (b), or for any specific charity: Provided always, that where any land so taken and appropriated shall be subject to any charitable use such lands shall be taken on such conditions only as the Court of Chancery in the exercise of its jurisdiction over charitable trusts shall appoint and direct.

Board may lay out burial ground, and build a chapel for performance of burials according to rites of Established Church.

XXX. It shall be lawful for any burial board to lay out and embellish any burial ground provided by such board in such manner as may be fitting and proper (c), and to build on any land to be purchased or appropriated for a burial ground under this act, and according to a plan to be approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the united church of England and Ireland; and such burial ground may be consecrated by the bishop of the diocese, when the same shall appear to him to be in a fit and proper condition, for the purposes of interment according to the rites of the united church: Provided always, that in providing any burial ground such board shall set apart a portion thereof which shall not be so consecrated as aforesaid, and may (d) build thereon a suitable chapel or chapels for the performance of funeral service.

Ground may be set apart for building a chapel, &c.

Burial board may contract for works to be done.

XXXI. Any burial board may from time to time enter into any contract with any persons or companies for building any chapel or chapels as aforesaid, and inclosing, laying out, and

(a) See post, Forms 11 and 12, p. 267.

(b) See notes, pp. 67-8.

(c) See note (c), p. 68.

(d) See 16 & 17 Vict. c. 134, s. 7, p. 70; 18 & 19 Vict. c. 128, s. 14, *ibid.*, and note (b), p. 71.

embellishing any burial ground, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this act, which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance (a); and all such contracts, or true copies thereof, shall be entered in books to be kept for that purpose: Provided always, that no contract above the value or sum of one hundred pounds shall be entered into by such burial board for the purposes of this act unless previous to the making thereof fourteen days notice shall be given in one or more of the public newspapers published in the county or counties in which the parish or respective parishes shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the burial board at a certain time and place in such notice to be mentioned, but it shall not be incumbent on the burial board to contract with the person offering the lowest price.

11 & 16 Vict.
c. 85.

No contract
above 100l.
to be entered
into without
notice.

XXXII. From and after the consecration as aforesaid of any burial ground provided under this act (except any portion thereof intended not to be so consecrated), or where all or any part of such burial ground, by reason of the same having been already consecrated, shall not require to be consecrated, then from and after such time as the bishop of the diocese shall appoint, such burial ground shall be deemed the burial ground of the parish for which the same is provided, and where the same is provided for two or more parishes such burial ground shall be in law as if such parishes were one parish, and as if such burial ground were the burial ground of such one parish; and every incumbent (b) or minister of the parish or of each of the parishes (as the case may be) for which such burial ground is provided shall, by himself and his curate, or such duly qualified persons as such incumbent or minister may authorize, perform the duties and have the same rights and authorities for the performance of religious service in the burial in such burial ground, or in the consecrated portion thereof, of the remains of parishioners or inhabitants of the parish of which he is such incumbent or minister, and shall be entitled to receive the same fees in respect of such burials which he has previously enjoyed and received (c); and the clerk and sexton of such parish or of each of such parishes shall (when necessary) perform and exercise the same duties and functions in respect

Burial
ground to be
the burial
ground of
the parish or
parishes for
which it is
provided.

(a) See post, Forms 14 and 15, pp. 269-72.

(b) Certain portions of the 32, 33, 35, 36, 37, and 50th sections of this act are repealed, as regards the *City of London*, by the 20 & 21 Vict. c. 35, s. 3. See p. 170.

(c) See note, p. 75.

15 & 16 VICT.
c. 85.

of the burial of the remains of parishioners or inhabitants of the parish of which he is clerk or sexton in such burial ground or the consecrated portion thereof, and shall be entitled to receive the same fees on such burials, as he has previously performed and exercised and received, as if such burial ground were the burial ground of the respective parish of such incumbent or minister, clerk and sexton respectively (*a*); and the parishioners and inhabitants of such parish or of each of such parishes shall have the same rights of sepulture in such burial ground as they respectively would have had in the burial ground or burial grounds in and for their respective parish, subject nevertheless to the provisions herein contained (*b*).

Board may
sell exclu-
sive rights
of burial
vaults, and
right to erect
monuments.

XXXIII. Any burial board, under such restrictions and conditions as they think proper, may sell the exclusive right of burial (*c*), either in perpetuity or for a limited period, in any part of any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground, but there shall be payable to the incumbent or minister of the parish out of the fees or payments to be paid in respect of any rights acquired under this enactment in the consecrated part of such burial ground (in lieu of the fees or sums which he would have been entitled to on the grant of the like rights in the burial ground of his parish) such fees or sums as shall be settled and fixed by the vestry with the approval of the bishop of the diocese, or if no such fees or sums shall have been so settled then such fees as he would by law or custom have been entitled to on the grant of the like rights in the burial ground of his parish.

Board to fix
payments
for inter-
ments in
burial
ground, and
for exclu-
sive right of
burial
vaults, and
right to
erect monu-
ments.

XXXIV. Every burial board under this act shall and may (without prejudice to the fees and payments herein specially provided for) fix and settle and receive such fees and payments in respect of interments in any burial ground provided by such board as they shall think fit, and also the sums to be paid for the exclusive right of burial, either in perpetuity or for a limited period, in any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground, and every burial board, with the consent of the vestry, may from time to time revise and alter such fees, payments, and sums as aforesaid; and a table showing such fees, payments, and sums, and all other

(*a*) See post, Form 16, p. 273.

(*b*) See note (*b*), p. 76.

(*c*) See post, Form 17, p. 274.

fees and payments in respect of interments in such ground, shall be printed and published, and shall be affixed and at all times continued on some conspicuous part of such burial ground (*a*). 15 & 16 VICT. c. 85.

XXXV. Where at the time of the discontinuance of interment in any burial ground the fees in respect of burials therein are divided between the incumbent of the parish and the incumbent of any district parish or other ecclesiastical district, each incumbent shall have the same proportion of the fees in the burial ground to be provided under this act as he was entitled to in respect of interments in the old burial ground (*b*). Division of fees between incumbents of parishes and ecclesiastical districts.

XXXVI. Where fees or any portion of fees payable on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any parish for which a burial ground is provided alone or jointly with any other parish or parishes under this act, are by law or custom payable to the churchwardens of any parish, or to trustees or other persons, for or towards the payment of any annuity or stipend to the incumbent or minister, or any other parochial purpose, or the discharge of any debt or liability, such fees or portion of fees shall be payable in the burial ground to be provided as aforesaid for such parish under this act, and shall be received by the burial board and paid to the parties entitled to receive the same; and where fees or payments have been received on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any such parish by any such churchwardens, or by trustees or other persons, for the purpose of discharging any periodical payment or other liability, it shall be lawful for the burial board, upon the request of such churchwardens, trustees, or persons, to pay from time to time, out of the fees and monies received by them on account of such parish, such amount as may be necessary for discharging such periodical payment or liability. Fees payable to churchwardens and others for parochial purposes.

XXXVII. It shall be lawful for the vestry of any parish from time to time, if they think fit, with the consent of the bishop of the diocese, to revise and vary the fees payable to the incumbent, clerk, and sexton, and other persons and bodies respectively, under the provisions of this act, or, with such consent as aforesaid, to substitute for the fees payable to such incumbent, clerk, and sexton, and other persons and bodies respectively, a fixed annual sum of such amount as to such vestry may seem just, to be payable by such periodical payments as such vestry may appoint, and in such last-mentioned case the fees which would otherwise be payable under this act to the incumbent, clerk, and sexton, and such other persons and bodies respectively, shall be paid to the burial Power to vestry, with consent of bishop, to revise the fees to incumbent, &c., or to substitute a fixed payment.

(*a*) See post, scale of fees adopted by some boards, p. 285, and suggested fees, p. 282.

(*b*) See note (*b*), p. 81; also note (*b*), p. 137.

5 & 16 Vict.
c. 85.

board, and such fixed payments as aforesaid shall be paid by such board.

Manage-
ment to be
vested in
burial
boards.

XXXVIII. The general management, regulation, and control of the burial grounds provided under this act shall, subject to the provisions of this act and the regulations to be made thereunder, be vested in and exercised by the respective burial boards providing the same; provided that any question which shall arise touching the fitness of any monumental inscription placed in any part of the consecrated portions of such grounds shall be determined by the bishop of the diocese.

Arrange-
ments be-
tween the
incumbents
of parishes.

XXXIX. Where a burial ground is provided under this act for the common use of two or more parishes, in case any question arise among the incumbents of such parishes as to the performance of the burial service by a chaplain to be paid by means of contributions from such incumbents, or deductions from fees or sums payable to them, or otherwise touching the performance of service in the consecrated part of such ground, the bishop of the diocese shall from time to time confirm any arrangement which a majority or, in case of equal numbers, one-half of the incumbents shall approve, and such arrangement so confirmed shall be binding upon all the parties concerned.

Certain pro-
visions of 10
& 11 Vict. c.
65, incorpo-
rated with
this act.

XL. The provision of "The Cemeteries Clauses Act, 1847," with respect to the protection of the cemetery, shall be incorporated with this act, and be applicable to any burial ground provided under this act (a).

Boards may
make ar-
rangements
for facilita-
ting the con-
veyance of
bodies to
burial
grounds.

XLI. Any burial board may make such arrangements as they may from time to time think fit for facilitating the conveyance of the bodies of the dead from the parish or the place of death to the burial ground which shall be provided under this act, or to any other place of burial, subject to the provisions of this act and the regulations to be made thereunder, and it shall be lawful for any of the aforesaid cemetery companies to undertake any such arrangement, and to carry the same into effect, subject to the provisions and regulations as aforesaid.

Places may
be provided
for reception
of bodies
until inter-
ment.

XLII. It shall be lawful for any burial board, with the approval of the vestry, and subject to the provisions of this act, and the regulations to be made thereunder, and for the churchwardens and overseers of the poor of any parish in the metropolis for which a burial board shall not have been appointed under this act, by the direction of the vestry, and subject as aforesaid, to hire, take on lease, or otherwise to provide fit and proper places in which bodies may be received and taken care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein, and for providing such places such burial boards may exercise the powers vested in them under this act for providing burial grounds; and such churchwardens and overseers may exercise

(a) See note, p. 89, and Appendix, p. 127.

all such powers as, under the act of the fifty-ninth year of King George the Third, chapter twelve, or otherwise, the churchwardens and overseers of any parish not having a workhouse might exercise for providing a workhouse for such parish (a). 15 & 16 Vict. c. 85.

XLIII. The provisions hereinbefore contained for the appointment of burial boards shall not apply to any parish within the limits of the city of London and the liberties thereof; but it shall be lawful for the mayor, aldermen, and commons of the said city, in common council assembled, if and when they see fit so to do, to authorize and direct the commissioners of sewers of the city of London to exercise for the said city and liberties all the powers and authorities vested in burial boards under this act; and thereupon such commissioners shall have and exercise for and on behalf of the said city and liberties all such powers and authorities as are hereby vested in the burial board for any parish, or which might be exercised by such board with the approval of the vestry; but the expenses to be incurred by such commissioners in providing and laying out any burial ground or burial grounds under this act, and building the necessary chapel or chapels therein, shall not exceed such sum as the said mayor, aldermen, and commons in common council assembled shall authorize to be expended for this purpose; and the money required for defraying the expenses incurred under this act by the said commissioners shall be charged upon and payable out of the consolidated rate authorized to be made by "The City of London Sewers Act, 1848," or any monies applicable for defraying the expenses by the said act charged upon or payable out of such rate; and the income of any burial ground provided under this act by such commissioners, which if such ground had been provided by a burial board for any parish would be applicable in aid of the rate for the relief the poor of such parish, shall be applicable in aid of the said consolidated rate; and the provisions contained in "The City of London Sewers Act, 1848," for the purpose (as therein expressed) of enabling the said commissioners to effect the purchases therein authorized, shall be applicable for the purpose of enabling the said commissioners to purchase land for the purposes of this act; and the powers for and auxiliary to the sale and disposal of land given or expressed to be given by "The City of London Sewers Act, 1848," and "The City of London Sewers Act, 1851" (b), with respect to land

The commissioners of sewers of the city of London to be a burial board for the parishes in the city and its liberties.

(a) See notes, p. 93, also Appendix, 59 Geo. 3, c. 12, p. 99, and 18 & 19 Vict. c. 79, p. 157.

(b) By the City Sewers Act, 1851, 14 & 15 Vict. c. 91, after any burial ground within the City shall have ceased to be used for interments, commissioners, with consent of bishop, may arrange with incumbent and churchwardens for appropriation thereof for public improvements (s. 32). Relatives of persons interred may, with consent of incumbent, under regulations of commissioners, remove any body from such ground to any cemetery without the City without faculty (s. 33). Commissioners, with consent of bishop, may cause any closed burial

15 & 16 Vict.
c. 85.

purchased by the said commissioners for any of the purposes mentioned in such last-mentioned act, and deemed by them unnecessary for such purposes, shall be applicable with respect to any land purchased by the said commissioners for the purposes of this act which may not appear to them to be wanted for such purposes; and all the provisions of the said City of London Sewers Act applicable to the exercise of the powers vested in the said commissioners shall be applicable to and for the purposes of this act, as if the powers which under this act may become vested in such commissioners had been powers vested in them under the said "City of London Sewers Act, 1848;" provided that it shall be lawful for the said mayor, aldermen, and commons to appoint any incumbent or incumbents of any parish or parishes within the said city or liberties to act with the said commissioners for the purposes of this act.

Secretary of
state may
make regu-
lations as to
burial
grounds, &c.

XLIV. It shall be lawful for one of her Majesty's principal secretaries of state from time to time to make such regulations in relation to the burial grounds and places for the reception of bodies previously to interment which may be provided under this act as to him may seem proper, for the protection of the public health and the maintenance of public decency, and the burial boards and all other persons having the care of such burial grounds and places for the reception of bodies shall conform to and obey such regulations (a).

Brompton
Cemetery
vested in
commis-
sioners of
works.

XLV. And whereas the General Board of Health have, under the powers of the said Metropolitan Interments Act, 1850, taken proceedings for the purchase of the cemetery of the West of London and Westminster Cemetery Company (commonly called the Brompton Cemetery), and the amount of the purchase-money has been ascertained by arbitration, but such purchase may not have been completed at the time of the passing of this act:

In case at the time of the passing of this act the said cemetery has not been conveyed to the General Board of Health, the rights and obligations of the General Board of Health with

ground to be planted, paved, or otherwise covered, and lower surface to adjoining level by carrying away soil thereof (s. 34), provided graves be disturbed as little as possible; and relatives may cause remains of bodies interred to be removed as bishop shall direct, at expense of commissioners, not exceeding 10*l.* (s. 35). If soil be planted or paved by commissioners, relatives may remove any tomb at their own expense (s. 36).

Under the Union of Benefices Act (23 & 24 Vict. c. 142, s. 17), nothing shall legalise the sale or letting of any burial ground; and the remains of bodies under any church which may be sold are to be removed, at the cost of the ecclesiastical commissioners, into some consecrated burial ground, "or to such portion of the vaults of the same church as may be separated and set apart for a burial place," also any monuments, to the church of the united parishes; notice to be given by the churchwardens to the friends of persons so interred of intention to remove such remains and monuments, and relatives may undertake such removal, if they prefer, at the like cost not exceeding 10*l.*

(a) For regulations issued by virtue of this section, see p. 94.

reference to the purchase of the said cemetery shall upon the passing of this act become transferred to the Commissioners of her Majesty's Works and Public Buildings; and in case the said cemetery shall be conveyed to them by virtue of the transfer hereby made of such rights and liabilities, then immediately upon such cemetery being so conveyed, or in case at the time of the passing of this act the said cemetery has been conveyed to the General Board of Health, then from and after the passing of this act the said cemetery shall, without any further conveyance, become vested in the said Commissioners of her Majesty's Works and Public Buildings and their successors, in the like corporate capacity in which any lands, tenements, or hereditaments are vested in them under the act of this last session of parliament, chapter forty-two, but subject to the rights to graves, vaults, and monuments subject to which such cemetery may have been conveyed to such commissioners or to the General Board of Health, as the case may be, and subject to the powers and for the purposes hereinafter mentioned.

XLVI. And whereas by an act of the last session of parliament, chapter eighty-nine, the Commissioners of her Majesty's Treasury are authorized to cause to be issued and advanced to the General Board of Health, out of the produce of the consolidated fund of the United Kingdom, a sum or sums not exceeding in the whole one hundred and thirty-seven thousand pounds, to be applied to the purposes to which money borrowed by the said Metropolitan Interments Act, 1850, is by the said act made applicable :

Money authorized to be advanced under 14 & 15 Vict. c. 89, may be applied in completing the purchase of the Brompton Cemetery.

It shall be lawful for the Commissioners of her Majesty's Treasury to cause to be advanced or issued to and applied by the Commissioners of her Majesty's Works and Public Buildings, out of the said consolidated fund, such part of the said sum of one hundred and thirty-seven thousand pounds as the said Commissioners of her Majesty's Treasury may think fit for the completion of the purchase of the said Brompton Cemetery, in case such purchase shall not have been completed at the time of the passing of this act, and for the care and management of the said cemetery; and the said Commissioners of the Treasury may also cause to be issued and advanced and applied such part of the said sum of one hundred and thirty-seven thousand pounds as the said Commissioners of the Treasury shall think fit in discharge of any liabilities of the said General Board of Health incurred under the powers of the said Metropolitan Interments Act, 1850, without requiring in the cases aforesaid any mortgage to be made for such advances.

XLVII. After payment to the said West of London and Westminster Cemetery Company, either by the General Board of Health or by the Commissioners of Her Majesty's Works and Public Buildings, of the purchase or consideration money for the said Brompton Cemetery, the said West of London and Westminster Cemetery Company shall continue only for the

Provision for winding up the West of London and Westminster Cemetery Company.

15 & 16 Vict.
c. 85.

purpose of winding up the affairs and realising and distributing the assets thereof, and satisfying any debts or engagements to or by the said company, and for the enforcement by law or in equity of such debts or engagements respectively, and the said company, as soon as conveniently may be after the payment of such purchase or consideration money, shall convert into money, by sale or otherwise, the effects of the said company, and get in the debts and assets thereof, and distribute and apportion the monies thence arising, together with such purchase or consideration money, after satisfying all the debts, engagements, and liabilities of the said company, to and among the several proprietors thereof, according to their respective shares and interests therein; and from and immediately after such distribution and apportionment the said company shall be dissolved, and the receipt of every person who for the time being would have been entitled to give an effectual discharge for any dividends which might have become payable in respect of any share in the said cemetery, or in the capital stock of the said company, in case the said Metropolitan Interments Act and this act had not been passed, for the proportion of the monies which under this provision shall become payable in respect of such share, shall be an effectual discharge to the said company and the directors thereof for the same.

Brompton
Cemetery
may be sold
by direction
of the Treas-
ury, and in
the mean-
time used
for inter-
ment.

XLVIII. The said Commissioners of Works and Public Buildings shall and may, in case the said Brompton Cemetery be vested in them by or under this act, sell and dispose of the same or any part thereof, subject to the rights affecting the same, as the Commissioners of her Majesty's Treasury may direct; and in the meantime, until such sale, the secretary of state may and shall permit the same to be used for the purposes of interment, upon such terms and conditions as he shall think fit; and the residue of the monies arising from the sale and disposal of the said cemetery, or any part thereof, and in respect of the interments therein, after defraying the expenses incident to such sale and to the care and management of the cemetery, until the whole thereof shall be sold and disposed of, shall be paid to the Metropolitan Interments Repayments Account mentioned in the said act of the last session of parliament, to be carried to the said consolidated fund.

Limiting
the compen-
sation fee to
be payable
on pauper
burials in
cemeteries.

XLIX. Where any body is buried in any of the cemeteries mentioned in Schedule (B.) to this act, at the expense of any union or parish, the fee or sum to be paid or payable on the interment of such body, or otherwise in respect thereof, to the incumbent of the parish or ecclesiastical district from which such body is removed for interment, shall not exceed the sum of one shilling, or where the incumbent now receives in respect of the like burial in the ground of his parish more than one shilling shall not exceed the sum so now received, and in no case shall exceed two shillings and sixpence; and no other fee or sum whatsoever shall be payable in respect of such inter-

ment, to or for the use of any person as an officer of such parish or district, or for or on behalf of such parish or district, anything in any act mentioned in the said Schedule (B) or any other act notwithstanding.

15 & 16 VICT,
c. 85.

L. Where under any local act fees on interments in any burial ground of any parish in the metropolis are payable to the churchwardens of such parish, or to any trustees or other persons, for the purpose of enabling them to pay an annuity or stipend to the incumbent or minister, the fees which under this act, or any act relating to any cemetery company, would, on the interment in the cemetery of any company of any body brought from such parish be payable to such incumbent or minister, shall be payable to the said churchwardens, trustees, or persons, and any surplus of such fees which may remain in their hands after payment of such annuity or stipend shall be paid to such incumbent or minister (a).

Incumbents' compensation to be payable to the churchwardens where the fees on burials are now paid to them, and the incumbents are not entitled.

LI. Where any burial ground in which interment is discontinued under this act belongs to any parish other than the parish within which the same is locally situate, it shall be lawful for the incumbent and churchwardens of the parish to which such burial ground belongs, with the consent of the vestry, or persons possessing the powers of vestry for ecclesiastical purposes of or in such parish, and of the bishop of the diocese, to convey any chapel belonging to such parish, and situate in or attached to such burial ground, and the site thereof, to any persons named by the incumbent and churchwardens of the parish within which the same is situate, with the consent of the vestry, or persons possessing the powers of vestry of or in such parish for ecclesiastical purposes, and of the said bishop, and upon such trusts for such last-mentioned parish, and subject to such conditions to be performed on behalf of such parish, and with such provision for the appointment of new trustees, as to the said bishop may seem proper; and such conveyance shall be effectual to pass all the estate and interest vested in any persons in trust or in behalf of the parish to which such chapel and the site thereof belong; and after the execution of such conveyance all obligation on such last-mentioned parish, or any trustees or others on behalf thereof, to repair such chapel, or to pay any stipend to the minister thereof, or otherwise in relation to or in connexion with such chapel, shall cease.

Power for incumbent or churchwardens to convey chapel.

LII. In this act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,

Interpretation of terms.

“Parish” shall mean every place having separate overseers of the poor, and separately maintaining its own poor (b):

“Ratepayers” shall mean the persons for the time being

(a) See note (b), p. 137.

(b) See note (b), p. 43.

15 & 16 VICT.
c. 85.

assessed to and paying rates for the relief of the poor of the parish :

“Incumbent” and “minister” shall, in respect of any fee made payable to an incumbent or minister under this act, mean the clergyman who would have been entitled to the fee had the body been buried in the churchyard or burial ground of the parish from which it came, or in the burial ground of the ecclesiastical district in case such district has a burial ground at the passing of this act (a), and if any difference shall arise between two or more persons severally claiming to be the incumbent or minister under this provision, such difference shall be determined by the bishop of the diocese :

“Churchwardens” shall mean also chapelwardens, or other persons discharging the duties of churchwardens :

“Overseers” shall mean also any person authorized and required to make and collect or cause to be collected the rate for the relief of the poor of the parish, and acting instead of overseers of the poor :

“Vestry” shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select or other vestry elected under an act of the fifty-ninth year of King George the Third, chapter twelve, “to amend the laws for the relief of the poor,” or elected under an act passed in the second year of King William the Fourth, chapter sixty, “for the better regulation of vestries, and for the appointment of auditors of accounts, in certain parishes of England and Wales,” or elected under the provisions of any local act of parliament for the government of any parish by vestries, in which parishes it shall mean such select or other vestry :

“Clerk” shall mean the clerk appointed pursuant to this act by any burial board appointed under this act.

Definition of
“the metro-
polis.”

LIII. For the purposes of this act, the expression “the metropolis” shall be construed to mean and include the cities and liberties of London and Westminster, the borough of Southwark, and the parishes, precincts, townships, and places mentioned in the Schedule (A) to this act.

Saving
rights of
cemetery
companies.

LIV. Provided always, that nothing in this act contained shall extend to take away, diminish, alter, or prejudice any of the rights, powers, or authorities vested in any of the cemetery companies incorporated under the several acts mentioned in the said Schedule (B.) to this act, but all such rights, powers, and authorities shall be as good, valid, and effectual as if this act had not passed.

(a) See note, p. 75.

SCHEDULE (A).

The city of London and the liberties thereof, the Inner Temple and Middle Temple, and all other places and parts of places contained within the exterior boundaries of the liberties of the city of London. 15 & 16 Vict.
c. 85.

IN MIDDLESEX.

The city and liberties of Westminster.

The parishes of St. Margaret and St. John the Evangelist.
 The parish of St. Martin in the Fields.
 The parish of St. George, Hanover Square.
 The parish of St. James.
 The parish of St. Mary-le-strand, as well within the liberty of Westminster as within the Duchy liberty.
 The parish of St. Clement Danes, as well within the liberty of Westminster as within the Duchy liberty.
 The parish of St. Paul, Covent Garden.
 The parish of St. Anne, Soho.
 Whitehall Gardens (whether the same be parochial or extra-parochial).
 Whitehall (whether the same be parochial or extra-parochial).
 Richmond Terrace (whether the same be parochial or extra-parochial).
 The close of the collegiate church of St. Peter.

The parishes of St. Giles in the Fields and St. George, Bloomsbury.
 The parishes of St. Andrew, Holborn, and St. George the Martyr.
 The liberty of Hatton Garden, Saffron Hill, and Ely Rents.
 The liberty of the Rolls.
 The parish of St. Pancras.
 The parish of St. John, Hampstead.
 The parish of St. Marylebone.
 The parish of Paddington.
 The precinct of the Savoy.
 The parish of St. Luke.
 The liberty of Glasshouse Yard.
 The parish of St. Sepulchre.
 The parish of St. James, Clerkenwell, including both districts of St. James and St. John.
 The parish of St. Mary, Islington.
 The parish of St. Mary, Stoke Newington.
 The Charterhouse.
 The parish of St. Mary, Whitechapel.
 The parish of Christchurch, Spitalfields.
 The parish of St. Leonard, Shoreditch.
 The liberty of Norton Folgate.
 The parish of St. John, Hackney.

15 & 16 VICT.
c. 85.

The parish of St. Matthew, Bethnal Green.
 The hamlet of Mile End Old Town.
 The hamlet of Mile End New Town.
 The parish of St. Mary, Stratford Bow.
 The parish of Bromley St. Leonard.
 The parish of All Saints, Poplar.
 The parish of St. Anne, Limehouse.
 The hamlet of Ratcliff.
 The parish of St. Paul, Shadwell.
 The parish of St. George in the East.
 The parish of St. John, Wapping.
 The liberty of East Smithfield.
 The precinct of St. Catherine.
 The liberty of her Majesty's Tower of London, consisting of
 The liberty of the Old Artillery Ground.
 The parish of Trinity, Minorities.
 The Old Tower precinct.
 The precinct of the Tower Within.
 The precinct of Wellclose.
 The parish of Kensington.
 The parish of St. Luke, Chelsea.
 The parish of Fulham.
 The parish of Hammersmith.
 Lincoln's Inn.
 New Inn.
 Gray's Inn.
 Staple Inn.
 That part of Furnival's Inn in the county of Middlesex.
 Ely Place.
 The parish of Willesden.

IN KENT.

The parish of St. Paul, Deptford.
 The parish of St. Nicholas, Deptford.
 The parish of Greenwich.
 The parish of Woolwich.
 The parish of Charlton.
 The parish of Plumstead.

IN SURREY.

The borough of Southwark.

The parish of St. George the Martyr.
 The parish of St. Saviour.
 The parish of St. John, Horsleydown.
 The parish of St. Olave.
 The parish of St. Thomas.

The parish of Battersea (except the hamlet of Penge).
 The parish of Bermondsey.
 The parish of Camberwell.

5 & 16 VICT.
c. 85.

The parish of Clapham.
The parish of Lambeth.
The parish of Newington.
The parish of Putney.
The parish of Rotherhithe.
The parish of Streatham.
The parish of Tooting.
The parish of Wandsworth.
The parish of Christchurch.
The Clink Liberty.
The hamlet of Hatcham in the parish of Deptford.

SCHEDULE (B).

The several CEMETERIES established under the several Acts hereinafter mentioned ; viz.—

An act for establishing a general cemetery for the interment of the dead in the neighbourhood of the metropolis : 2 & 3 W. 4, c. 110.

An act for establishing a cemetery for the interment of the dead southward of the metropolis, to be called the "South Metropolitan Cemetery : " 6 & 7 W. 4, c. 129.

An act for establishing cemeteries for the interment of the dead northward, southward, and eastward of the metropolis, by a company to be called "The London Cemetery Company : " 6 & 7 W. 4, c. 136.

An act for establishing a cemetery for the interment of the dead westward of the metropolis, by a company to be called "The West of London and Westminster Cemetery Company : " 1 Vict. c. 130.

and

An act to establish a general cemetery for the interment of the dead in the parishes of St. Dunstan, Stepney, and Saint Leonard, Bromley, in the county of Middlesex. 4 & 5 Vict. c. 63.

The Victoria Park Cemetery in the parish of Saint Matthew, Bethnal Green, in the county of Middlesex : and

The Abney Park Cemetery in the parish of Saint Mary, Stoke Newington, in the county of Middlesex.

16 & 17 VICT. c. 134.

An Act to amend the Laws concerning the Burial of the Dead in England beyond the Limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis. 16 & 17 VICT. c. 134.

[20th August, 1853.]

WHEREAS an act was passed in the last session of parliament, "to amend the Laws concerning the Burial of the Dead in the Metropolis," and it is expedient to make better provision for and in relation to burials beyond the limits of the said act : be it therefore enacted by the Queen's most excellent Majesty, 15 & 16 Vict. c. 85.

16 & 17 Vict.
c. 134.

On representation of secretary of state, her Majesty in council may restrain the opening of new burial grounds, and order discontinuance of burials in specified places.

Order not to extend to burial grounds of Quakers or Jews, unless expressly included.

Burial not to take place after order in council for discontinuance.

by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :

I. In case it appear to her Majesty in council, upon the representation of one of her Majesty's principal secretaries of state, that for the protection of the public health the opening of any new burial ground in any city or town, or within any other limits, save with the previous approval of one of such secretaries of state, should be prohibited, or that burials in any city or town, or within any other limits, or in any burial grounds or places of burial, should be wholly discontinued, or should be discontinued subject to any exception or qualification, it shall be lawful for her Majesty, by and with the advice of her privy council, to order that no new burial ground shall be opened in such city or town, or within such limits, without such previous approval, or (as the case may require) that after a time mentioned in the order burials in such city or town, or within such limits, or in such burial grounds or places of burial, shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and so from time to time as circumstances may require : Provided always, that notice of such representation, and of the time when it shall please her Majesty to order the same to be taken into consideration by the privy council, shall be published in the London Gazette, and shall be affixed on the doors of the churches or chapels of, or on some other conspicuous places within, the parishes affected by such representation, one month before such representation is so considered : Provided also, that no such representation shall be made in relation to the burial ground of any parish until ten days previous notice of the intention to make such representation shall have been given to the incumbent and the vestry clerk or churchwardens of such parish.

II. No such order in council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order ; and nothing in this act shall prevent the burial in any such burial ground in which for the time being interment is not required to be discontinued of the bodies of such people and persons respectively ; and no such order in council as aforesaid shall be deemed to extend to any non-parochial burial ground being the property of any private person, unless the same be expressly mentioned in such order.

III. It shall not be lawful, after the time mentioned in any such order in council for the discontinuance of burials, to bury the dead in any church, chapel, churchyard, or burial place, or elsewhere within the parts to which such order extends, or in the burial grounds or places of burial (as the case may be) in

which burials have by any such order been ordered to be discontinued, except as in this act or in such order excepted; and every person who shall, after such time as aforesaid, bury any body, or in anywise act or assist in the burial of any body, contrary to this enactment, shall be guilty of a misdemeanor (a).

16 & 17 Vict.
c. 134.

IV. Provided always, that, notwithstanding any such order in council, where by virtue of any faculty legally granted, or by usage or otherwise, there is at the time of the passing of this act any right of interment in or under any church or chapel affected by such order, or in any vault of any such church or chapel, or of any churchyard or burial ground affected by such order, and where any exclusive right of interment in any such burial ground has been purchased or acquired before the passing of this act, it shall be lawful for one of her Majesty's principal secretaries of state, from time to time, on application (b) being made to him, and on being satisfied that the exercise of such right will not be injurious to health, to grant licence for the exercise of such right during such time and subject to such conditions and restrictions as such secretary of state may think fit, but such licence shall not prejudice or in anywise affect the authority of the ordinary, or of any other person who, if this act had not been passed, might have prohibited or controlled interment under such right (c), nor dispense with any consent which would have been required, nor otherwise give to such right any greater force or effect than the same would have had if this act had not been passed.

Saving of
certain
rights to
bury in
vaults, &c.

V. The provisions of this act shall not extend to authorise the discontinuance of burials, or to prevent the burial of the body of any person, in any cemetery (d) established under the authority of any act of parliament, or in any burial ground or cemetery to be hereafter provided with the approval of one of her Majesty's principal secretaries of state, as herein mentioned.

Not to ex-
tend to
cemeteries
established
by act of
parliament,
or new
burial
grounds, &c.

VI. Where by any such order in council as aforesaid it is ordered that no new burial ground shall be opened in any city or town, or within any limits therein mentioned, without the previous approval of one of her Majesty's principal secretaries of state, no new burial ground or cemetery (parochial or non-parochial) shall be provided and used in such city or town, or within such limits, without such previous approval (e).

New burial
grounds not
to be opened
contrary to
order in
council.

VII. All the provisions contained in the said act of the last session of parliament, chapter eighty-five, "to amend the Laws concerning the Burial of the Dead in the Metropolis," from section ten to section forty-two (both inclusive) of the said act, and also in sections forty-four, fifty, fifty-one, and fifty-two of the said act, shall extend and be applicable to and in respect

Certain pro-
visions of
metropoli-
tan burial
act, 15 & 16
Vict. c. 85,
extended to
parishes, &c.

(a) See note (a), p. 25.

(c) See note, p. 27.

(b) See note (a), p. 27.

(d) See note, p. 23.

(e) See note, p. 33.

16 & 17 VICT.
c. 134.

not in the
metropolis.

Any burial
board build-
ing a chapel
for burials
according to
the rites of
the Church
of England,
also to build
a chapel for
persons not
being mem-
bers of the
Church of
England.

Register of
burials to be
kept in
every
ground pro-
vided under
15 & 16 Vict.
c. 85, or
under this
act.

of any parish not in the metropolis, and for the purpose of providing a burial ground for any such parish, or otherwise providing for the interment of the bodies of persons who would have had right of interment in the burial ground of any such parish, and generally in relation to every such burial ground to be so provided, and the fees and payments to be received in respect of interment or other rights therein and otherwise, as if such sections were re-enacted in this act, and the words "in the metropolis, wherever they occur in such sections, or any of them, were omitted; and section forty-nine of the said act shall extend to all cemeteries already established and hereafter to be established under the authority of parliament in like manner as to those mentioned in Schedule (B) to that act, and as respects the cemeteries to which such section is hereby extended, the same shall also apply in respect of burials at the expense of any hospital or infirmary in like manner as to burials at the expense of a union or parish: Provided always, that in all cases in which any burial board shall provide a new burial ground under the said act of the last session of parliament or under this act, that new burial ground shall be divided into consecrated and unconsecrated parts, in such proportions, and the unconsecrated part thereof shall be allotted in such manner and in such portions, as may be sanctioned by one of her Majesty's principal secretaries of state; and when any burial board shall by virtue of section thirty of the said act build on any burial ground provided by such board a chapel for the performance of the burial service according to the rites of the United Church of England and Ireland, they shall (a) also build, on the portion of such ground set apart for burials otherwise than according to the rites of the said church, such chapel accommodation for the performance of burial service by persons not being members of the said church as may be approved of by one of her Majesty's secretaries of state.

VIII. All burials within any burial ground provided under the said act of the last session of parliament or this act shall be registered in a register book to be provided by the burial board providing such ground (or, where the same is provided by the commissioners of sewers of the city of London, then by such commissioners), and kept for that purpose according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England; and such register book shall be so kept by some officer appointed by the said board or the commissioners to that duty; and in such register books shall be distinguished in what parts of the burial ground, and where the whole of such burial ground is not consecrated for interments according to the rites of the United Church of England and Ireland, whether in

(a) See 15 & 16 Vict. c. 85, s. 30, p. 68; 18 & 19 Vict. c. 128, s. 14, and note thereon, pp. 70, 71.

the portion so consecrated or in the portion not so consecrated the several bodies (the burials of which are entered in such register books) are buried; and in case such burial ground has been provided for more than one parish, such register shall be kept or indexed so as to facilitate searches for entries in such books in respect of bodies from the several parishes (a); and such register books, or copies or extracts therefrom, shall be received in all courts as evidence of the burials entered therein, and copies or transcripts of such register books, verified and signed by such officer as aforesaid, shall be from time to time sent to the registrar of the diocese, to be kept with the copies of the other register books of the parishes within such diocese; and the said register books, so far as respects searches to be made therein and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by an act passed in the seventh year of King William the Fourth, intituled An Act for registering Births, Deaths, and Marriages in England, so far as such regulations relate to register books of burials kept by any rector, vicar, or curate.

16 & 17 VICT.
c. 134.

Entries to be
evidence.

6 & 7 W. 4,
c. 86.

IX. Nothing in this act, except the provisions in sections seven and eight, shall extend to any parish in the "metropolis," as defined by the said act of the last session, or otherwise affect the provisions of that act.

Act, except
ss. 7 and 8,
not to ex-
tend to the
metropolis.
Extent of
act.

X. This act shall not extend to Scotland or Ireland.

17 & 18 VICT. c. 87.

An Act to make further Provision for the Burial of the Dead in England beyond the Limits of the Metropolis. [10th August, 1854.]

17 & 18 VICT.
c. 87.

WHEREAS an act was passed in the last session of parliament, chapter one hundred and thirty-four, intituled An Act to amend the Laws concerning the Burial of the Dead in England, beyond the Limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis: And whereas under the said act provision is made for providing burial grounds for parishes by burial boards to be appointed by vestries: And whereas in some cases of parishes wholly or partly within boroughs there is difficulty or inconvenience in providing requisite places of burial for the inhabitants under the powers of the said act, and it is expedient that in such cases such places of burial should be provided by the councils of such boroughs: he it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present

16 & 17 VICT.
c. 134.

(a) See note, p. 86.

17 & 18 VICT.
c. 87.

parliament assembled, and by the authority of the same, as follows :

Her Majesty may, by order in council, invest town councils with the power of providing burial grounds.

I. In case it appear to her Majesty in council, upon the petition of the town council of any borough (a), stating that an order in council has been made for closing all or any of the burial grounds of one or more parishes being wholly or partly within such borough, that there is difficulty or inconvenience in providing, under the powers of the said act of the last session of parliament, requisite places of burial for the inhabitants of such parish or parishes, it shall be lawful for her Majesty, with the advice of her privy council, to order that powers shall be vested in the council of such borough for providing such places of burial under the provisions of this act : Provided always, that notice of such petition and of the time when it shall please her Majesty to order that the same be taken into consideration by the privy council shall be published in the London Gazette, and in one of the newspapers usually circulating in such borough, one month at least before such petition is so considered.

Upon the making of such order borough council to have all the powers vested in burial boards under 16 & 17 Vict. c. 134.

II. Upon the making of any such order of her Majesty in council as aforesaid in relation to any borough, if the town council of the same shall decide upon providing one or more burial grounds, the said town council shall be a burial board for that purpose, and the provisions of the said act of the last session, and the provisions of the act of the fifteenth and sixteenth years of her Majesty, chapter eighty-five, in the said act of the last session mentioned or referred to and thereby extended and made applicable as therein mentioned, except the provisions relating to the constitution, incorporation, meetings, entries of proceedings, and accounts of burial boards, shall, subject to the provisions herein contained, extend and be applicable to such borough and the council thereof, and to any burial ground and any places for the reception of the bodies of the dead previously to interment which may be provided by such council under this act in like manner as the same are applicable to any parish and the burial board thereof, and to any burial ground and any such places as aforesaid provided by such burial board, save that no approval, sanction, or authorisation of the vestry of any parish shall be requisite.

Expenses to be paid out of borough fund or borough rates.

III. Provided always, that all expenses of carrying this act into execution in any borough shall, subject to the provisions hereinafter contained, be chargeable upon and paid out of the borough fund and borough rates of such borough, or partly out of such fund and partly out of such rates, in like manner as if the same were expenses incurred in carrying into effect the provisions of an act of the session holden in the fifth and six years of King William the Fourth, chapter seventy-six ; and any

(a) The word "borough" to include any city, borough, cinque port, or town corporate. See 20 & 21 Vict. c. 81, s. 29, p. 153.

money to be borrowed under the authority of this act by the council of such borough, and the interest thereon, shall be charged by such council on the monies out of which such expenses are by this act directed to be paid, and the said provisions hereby extended and made applicable to the said council shall be construed accordingly; and any surplus of money raised for defraying such expenses as aforesaid, and of the income of any burial ground provided by the council of any borough, which if the same were provided by a burial board for any parish would be applicable in aid of the rate for the relief of the poor of such parish, shall be applicable in aid of the borough fund or borough rates of such borough, or in case a separate rate has been levied in parts only of such borough, for the purposes of this act, as hereinafter provided, then such surplus shall be applied rateably towards payment or satisfaction of so much of any borough rate as may be leviable in such parts of such borough: Provided always, that such surplus shall be ascertained upon the auditing of the accounts of the treasurer of such borough in the month of September in any year (a).

17 & 18 Vict.
c. 87.

IV. If any burial board under the said act of the last session of parliament, or the council of any borough acting under this act, can at any time borrow at a lower rate of interest than that secured by any mortgage previously made by them, and then outstanding and in force, they may, if they think fit, so borrow accordingly in order to pay off and discharge any security or securities bearing a higher rate of interest, and to secure the repayment of the money so borrowed, and the interest to be paid thereon, in like manner as other monies authorised to be borrowed by such burial board or council under the said act of the last session or this act (b).

Money may be borrowed at lower rates of interest to pay off securities bearing a higher rate.

V. If at the time appointed by any mortgage for payment of the principal money secured thereby any such burial board or council as aforesaid are unable to pay off the same, they may, if they think fit, borrow such sum of money as may be necessary for the purpose of paying off all or any part of such principal money, and secure the repayment of the money so borrowed, and the interest to be paid thereon, in like manner as other monies authorised to be borrowed by such burial board or council under the said act of the last session or this act.

Power to borrow money to pay off former mortgages.

VI. The council of any borough shall act in execution and exercise of their duties, powers, and authorities under this act in like manner as in execution and exercise of their duties, powers, and authorities under the said act of the fifth and sixth years of King William the Fourth; and every conveyance of lands to be purchased for the purposes of this act shall be taken in the name of the body corporate of such borough, and such

Council how to act under this act, and conveyances and sales of lands how to be made.

(a) Council may make separate burial rate. See 20 & 21 Vict. c. 81, ss. 22, p. 180.

(b) This and the following section are practically superseded by 20 & 21 Vict. c. 81, ss. 19, 20, 21. See page 180.

17 & 18 Vict.
c. 87.

body corporate shall have power to hold such lands for the purposes of this act; and no lands purchased under this act by the council of any borough shall be sold, except with the like approbation and subject to the like restrictions as if sold under the said act of the fifth and sixth years of King William the Fourth; and the signature of any member or members of such council shall not be necessary to any conveyance of any lands sold; and a receipt under the hand of the treasurer of such borough shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

Burial
ground to be
deemed to
be for the
parishes in
the borough.

VII. The burial ground or burial grounds provided for any borough under this act shall be deemed to be provided for such parish or parishes wholly or in part situate in such borough as the town council shall determine.

Council may
fix a higher
rate of pay-
ment for in-
terment, &c.
in respect
of outlying
part of any
parish
partly si-
tuate in the
borough.

VIII. It shall be lawful for the council of any borough, if they see fit, in fixing and settling, revising and altering, the fees, payments, and sums mentioned in section thirty-four of the said act of the fifteenth and sixteenth years of her Majesty, from time to time to fix all or any of such fees, payments, and sums in respect of interments of the remains of persons, being inhabitants of that part of any parish partly within and partly without the limits of such borough which is without such limits, and in respect of other rights to be exercised with reference to the interment of the remains of such persons, at a higher amount than the ordinary charge for the time being fixed by such council in respect of the like matters; provided always, that such higher amount shall be fixed with the approval of one of her Majesty's principal secretaries of state.

Order in
council may
except
parishes
already
having
burial
grounds;
and in such
case, if a
rate be ne-
cessary, a
separate
rate to be
made on the
rest of the
borough.

IX. Where, previously to the making of any order in council under this act in relation to any borough, it appears to her Majesty in council, upon the petition of the town council so made as aforesaid, or otherwise, that any parish wholly or in part within such borough, is provided with a sufficient burial ground, it shall be lawful for her Majesty in and by such order to direct that no part of such parish shall be assessed towards defraying the expenses of executing this act in such borough, and in such case no burial ground provided for such borough under this act shall be deemed to be provided for such parish; and any money required to be raised in such borough for defraying such expenses, or paying any money borrowed under this act by the council of such borough, or any interest thereon, by means of a rate to be levied in such borough, shall be raised by a separate rate, to be levied within such parts of such borough as are not exempted under such order from being assessed as aforesaid: and (so far as may be consistent with this provision) the council of such borough shall have all such powers for making and levying such rate, and all provisions shall be applicable in respect thereof, as in the case of a borough rate made under the said act of the fifth and sixth years of King William the Fourth.

X. The powers of settling and fixing the fees or sums to be payable to the incumbent or minister, and of revising and varying the fees payable to the incumbent, clerk and sexton, and other persons and bodies, and of substituting for such fees fixed annual sums, by sections thirty-three and thirty-seven of the said act of the fifteenth and sixteenth years of her Majesty given to the vestry, and exercisable with the approval or consent of the bishop of the diocese, as therein mentioned, shall, with respect to fees and sums arising in or from any burial ground provided under this act by the council of any borough, be transferred to such council, and be exercisable with the like approval or consent (a).

17 & 18 Vict.
c. 87.

Powers of vestry, with consent of bishop, of fixing and revising the fees payable to incumbent, &c., transferred to the borough council.

XI. It shall be lawful for the council of any borough to appropriate for the purposes of this act any land belonging to the body corporate of such borough, or vested in any feoffees, trustees, or others, for the general benefit of the borough, or for any specific charity; provided always, that where any land so appropriated shall be subject to any charitable use, such land shall be taken on such conditions only as the Court of Chancery, in the exercise of its jurisdiction over charitable trusts, shall appoint and direct.

Council may appropriate land belonging to the borough.

XII. So much of the said act of the fifteenth and sixteenth years of her Majesty as enacts, that "no ground (not already used as or appropriated for a cemetery) shall be appropriated as a burial ground or as an addition to a burial ground under that act nearer than two hundred yards to any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house," shall not extend or be applicable to or in respect of any burial grounds which have been or may be provided under the said act of the last session and this act, or either of them, or to or in respect of any addition which has been or may be so provided to any burial ground; but no ground not already used as or appropriated for a cemetery shall be appropriated under the said act of the last session and this act, or either of them, as a burial ground, or as an addition to a burial ground, nearer than one hundred yards to any dwelling-house, without such consent as aforesaid.

Burial ground not to be within 100 yards of a dwelling-house.

18 & 19 Vict. c. 79.

An Act to amend the Law regarding the Burial of Poor Persons by Guardians and Overseers of the Poor. 18 & 19 Vict.
c. 79.

[30th July, 1855.]

WHEREAS by the act of the eighth year of the reign of her Majesty, chapter one hundred and one, provisions were made for the burial of poor persons by guardians and overseers of

7 & 8 Vict.
c. 101, s. 31.

(a) See post, p. 285, scale of fees adopted by some burial boards; also suggested scale, p. 282.

18 & 19 VICT.
c. 79.

the poor (a): And whereas, in consequence of the closing of the burial grounds in many parishes, and the want of adequate space in others, great difficulty is frequently found in carrying into execution the above provisions, and it is expedient that other provisions should be made: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same:

I. That where the guardians of any union or parish (b), or any of their officers duly authorized in that behalf, or the overseers of any parish not under a board of guardians, shall undertake the burial of any poor person (c), or shall contribute money

Where burial ground of parish closed or over-crowded,

a. The provisions here referred to are as follows:—"And be it declared and enacted, that it shall be lawful for guardians, or where there are no guardians for the overseers, to bury the body of any poor person which may be within their parish or union respectively, and to charge the expense thereof to any parish under their control to which such person may have been chargeable, or in which he may have died, or otherwise in which such body may be; and unless the guardians, in compliance with the desire expressed by such person in his lifetime, or by any of his relations, or for any other cause, direct the body of such poor person to be buried in the churchyard or burial ground of the parish to which such person has been chargeable (which they are hereby authorised to do), every dead body which the guardians or any of the officers duly authorised shall direct to be buried at the expense of the poor rates, shall (unless the deceased person, or the husband or wife or next of kin of such deceased person, have otherwise desired) be buried in the churchyard or other consecrated burial ground in or belonging to the parish, division of parish, chapelry, or place in which the death may have occurred; and in all cases of burial under the direction of the guardians or overseers as aforesaid the fee or fees payable by the custom of the place in which the burial may take place, or under the provisions of any act of parliament, shall be paid out of the poor-rates, for the burial of each such body, to the person or persons who by such custom or under such act may be entitled to receive any fee: Provided always, that it shall not be lawful for any officer connected with the relief of the poor to receive any money for the burial of the body of any poor person which may be within the parish, division of parish, chapelry, or place in which the death may have occurred, or to act as undertaker for personal gain or reward in the burial of any such body, or to receive any money from any dissecting school, or school of anatomy, or hospital, or from any person or persons to whom any such body may be delivered, or to derive any personal emolument whatever for or in respect of the burial or disposal of any such body; and any such officer offending as aforesaid shall, on conviction thereof before any two justices, forfeit and pay a sum not exceeding five pounds. 7 & 8 Vict. c. 101, s. 31.

(b) Extra-parochial places to be deemed parishes by name designated in the Registrar-General's Report on the census for all the purposes of the assessment (*inter alia*) to the burial of the dead. Justices shall appoint overseers. 20 Vict. c. 19, s. 1.

(c) By the common law, any person dying from home, and having no friends to provide for burial, must be decently interred by the person in whose house the body lies. Public bodies have similar duties, e. g. governors of hospitals (*R. v. Stewart*, 12 Ad. & Ell. 773). A parent, if able, must bury his child, but is not bound to incur a debt for the purpose (*R. v. Fann*, 21 L. J. N. S. M. C. 39).

or other aid towards the same (a), and the burial cannot take place in the parish where, according to the provisions of the said act, the same would have been required to take place, by reason of the public burial ground of such parish having been closed, and no other having been provided, or where, in consequence of the crowded state of such burial ground, the guardians or overseers respectively are of opinion that the burial of such dead body therein would be improper, it shall be lawful to bury such body in a public burial ground (some part of which

18 & 19 Vict.
c. 79.

guardians
or overseers
may bury in
neighbour-
ing parish.

(a) And be it enacted, that it shall be lawful for the guardians of any union to contribute out of the common fund, or for the guardians of any parish to contribute out of the poor-rates of such parish, such sum of money as the Poor Law Board shall approve, towards the enlargement of any churchyard or consecrated public burial ground in the parish wherein the workhouse shall be situated, or in any other parish of the union, or towards the obtaining of any such consecrated public burial ground, and where any such burial ground shall be enlarged or obtained with the aid of any such contribution, it shall be lawful for them to bury therein the dead body of any poor person dying in such workhouse: Provided always, that nothing in this act contained shall discharge or vary the obligation now imposed by law upon the guardians to bury the dead body of such poor person elsewhere, in case the deceased person, or the husband, or wife, or next of kin of such deceased person, shall have so requested: Provided also, that in all cases of burial under the direction of the guardians as aforesaid the fee or fees payable by the custom of the place where the burial may be, or under the provisions of any act of parliament, shall be paid by the said guardians for the burial of each such body to the person or persons who by such custom or under such act shall be entitled to receive such fee or fees, and charged by them in like manner as the relief to the deceased when living was last chargeable. 13 & 14 Vict. c. 101, s. 2. By 7 & 8 Vict. c. 101, s. 56, it is enacted that for purposes of burial the workhouse or school of any union shall be considered as situated in the parish to which each deceased pauper has been chargeable.

With reference to lunatics dying in asylums—the expenses attending the burial of pauper lunatics being chargeable to the union, parish, or county as the case may be (16 & 17 Vict. c. 97, s. 120)—by the 18 & 19 Vict. c. 105, ss. 11 and 12, powers are given to the visitors similar to those to be exercised by the guardians under ss. 1 and 2 of the above act, and by s. 13 the visitors are authorised, with the consent of the secretary of state, to convey land not exceeding two acres, to the Church Building Commissioners, to be consecrated for the burial of pauper lunatics and officers dying in such asylums. Further, by the 25 & 26 Vict. c. 111, s. 9, the visitors may provide for the burial of pauper lunatics dying in the asylum by acquiring a new burial ground, or enlarging any existing ground; or they may contribute any sums of money to any persons agreeing to provide for such burials; but not more than two acres shall be purchased for any one asylum for burial purposes, and the sanction of the quarter sessions, and of the secretary of state shall be given to any plan proposed for carrying the section into effect.

Dead bodies cast on shore from the sea are to be interred by the churchwardens or overseers (under a penalty of £5 for neglect) in the burial ground of the parish in which they are found (48 Geo. 3, c. 75, ss. 1—7), and the minister of the parish, &c., shall perform the service (s. 2). Persons finding such bodies and giving notice to churchwardens, &c., to receive five shillings reward (s. 3); but on neglect to give such notice such persons shall forfeit £5 (s. 4). Expenses to be defrayed by churchwardens, &c. (s. 5), who are to be reimbursed by treasurer of the county (s. 6).

19 VICT.
c. 79.

has been consecrated) or in some other parish as near as conveniently may be to the parish wherein the burial would have been required to take place according to the provisions of the said act (a) ; Provided, that in all cases of burial under the direction of the guardians or their officers, or of the overseers, as aforesaid, the fee or fees payable by the custom of the place where the burial may be, or under the provisions of any act of parliament, shall be paid by the said guardians or overseers for the burial of each such body to the person or persons who by such custom or under such act of parliament shall be entitled to receive such fee or fees.

Power to
enter into
agreements
with ceme-
tery com-
panies or
burial
boards.

II. The guardians of any union or parish, or the overseers of any parish not under a board of guardians, may from time to time enter into agreements with the proprietors of any cemetery established under the authority of parliament, or with any burial board duly constituted under the statutes in that behalf, for the burial of the dead bodies of any poor persons which such guardians or overseers may undertake to bury, or towards the burial whereof they may render assistance : and thereupon the burial of any such body, under the directions of the said guardians or their officer, or of such overseers, or with their aid respectively, in such cemetery, or in the burial ground of such burial board (unless the deceased person, or the husband or wife or next of kin of such deceased person, have otherwise expressly desired), shall be lawful : Provided, however, that no such agreement shall be valid unless made in such form and with such stipulations as the Poor Law Board shall approve.

Construe-
tion of words
to be as in
4 & 5 W. 4,
c. 76, &c.

III. The words contained in this act shall be construed in like manner as in the act of the fifth year of King William the Fourth, chapter seventy-six (b), and in the several acts incorporated therewith.

(a) See 20 & 21 Viet. c. 81, s. 6, p. 171 ; also 15 & 16 Viet. c. 85, s. 42, p. 140.

(b) The 4 & 5 Will. 4, c. 76, s. 169, enacts as follows:—The word “guardian” shall be construed to mean and include any visitor, governor, director, manager, acting guardian, vestryman, or other officer in a parish or union, appointed or entitled to act as a manager of the poor, and in the distribution or ordering of the relief to the poor from the poor rate, under any general or local act of parliament ; the word “officer” shall be construed to extend to any clergyman, schoolmaster, person duly licensed to practise as a medical man, vestry clerk, treasurer, collector, assistant overseer, governor, master or mistress of a workhouse, or any other person who shall be employed in any parish or union in carrying this act or the laws for the relief of the poor into execution, and whether performing one or more of the above mentioned functions ; the word “overseer” shall be construed to mean and include overseers of the poor, churchwardens, so far as they are authorised or required by law to act in the management or relief of the poor, or in the collection or distribution of the poor-rate, assistant overseer, or any other subordinate officer, whether paid or unpaid, in any parish or union, who shall be employed therein in carrying this act or the laws for the relief of the poor into execution ; the word “parish” shall be construed to include any parish, city, borough, town, township, liberty, precinct, vill, village, hamlet, tithing, chapelry, or any other place or division or district of a place,

18 & 19 VICT. c. 128.

An Act further to amend the Laws concerning the Burial of the Dead in England. 18 & 19 VICT.
c. 128.

[14th August, 1855.]

WHEREAS an act was passed in the session of parliament holden in the fifteenth and sixteenth years of her Majesty (chapter eighty-five), "to amend the Laws concerning the Burial of the Dead in the Metropolis;" and an act was passed in the session of parliament holden in the sixteenth and seventeenth years of her Majesty (chapter one hundred and thirty-four), "to amend the Laws concerning the Burial of the Dead in England beyond the Limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis;" and an act was passed in the last session of parliament (chapter eighty-seven), "to make further Provisions for the Burial of the Dead in England beyond the Limits of the Metropolis:" and whereas it is expedient that further provision should be made for the burial of the dead, and that the said acts should be amended: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows;

1. It shall be lawful for her Majesty, by and with the advice of her privy council, from time to time to postpone the time appointed by any order in council for the discontinuance of burials, or otherwise to vary any order in council made under any of the said recited acts or this act, (whether the time thereby appointed for the discontinuance of burials thereunder or other operation of such order shall or shall not have arrived,) as to her Majesty, with such advice as aforesaid, may seem fit; and every order of her Majesty in council made before the passing

Orders in council under the recited acts may be varied by like orders.

maintaining its own poor, whether parochial or extra-parochial; the word "*person*" shall be construed to include any body politic, corporate, or collegiate, aggregate or sole, as well as any individual; the word "*poor*" shall be construed to include any pauper or poor, or indigent person applying for or receiving relief from the poor-rate in England or Wales, or chargeable thereto; the word "*union*" shall be construed to include any number of parishes united for any purpose whatever under the provisions of this act, or incorporated under the act made and passed in the twenty-second year of his late Majesty King George the Third, intituled An Act for the better Relief and Employment of the Poor, or incorporated for the relief or maintenance of the poor under any local act; and wherever in this act, in describing any person or party, matter or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there be something in the subject or context repugnant to such construction.

19 & 19 VICT.
c. 128.

Penalty on
persons
burying
contrary to
the provi-
sions of
orders in
council.

Power to
church-
wardens to
call vestry
meetings for
providing
burial
grounds.

Where order
in council
has been
made, or
notice given
to apply to
the privy
council for
closing
burial
grounds,
church-
wardens
shall call a
meeting of
vestry.

Vacancies in
burial board
to be filled
up by vestry
within a
month.

of this act for varying any order previously made under the said acts or any of them shall be deemed valid and effectual in law.

II. If any person, after the time mentioned in any order in council under the said acts or any of them, or this act, for the discontinuance of burials, shall knowingly and wilfully bury any body or in anywise act or assist in the burial of any body in any church, chapel, churchyard, burial ground, or place of burial or (as the case may be) within the limits in which burials have by such orders been ordered to be discontinued, in violation of the provisions of any such order, every person so offending shall, upon summary conviction before two justices of the peace, forfeit a sum not exceeding ten pounds (*a*).

III. The churchwardens or other persons to whom it belongs to convene meetings of the vestry (*b*) of any parish in which no burial board has been appointed may, at any time, at their discretion, without requisition of ratepayers for that purpose, convene a meeting of such vestry for the purpose of determining whether a burial ground shall be provided for the parish (*c*); and where any order in council has been made before the passing of this act for discontinuing burials (wholly or subject to any exception or qualification) in any burial ground of any parish for which no burial board has been appointed, or notice has been given of the intention of the secretary of state to make a representation to her Majesty in council that burials should be discontinued (wholly or subject to any exception or qualification) in any burial ground of any parish, the churchwardens or other persons to whom it belongs to convene meetings of vestry shall, with all convenient speed after the passing of this act, convene a meeting of the vestry for the purpose aforesaid; and where at any time hereafter notice is given of the intention of the secretary of state to make a like representation in relation to a burial ground of any parish, such churchwardens or other persons as aforesaid shall forthwith convene a meeting of the vestry for the purpose aforesaid; and all the provisions of the said acts as amended by this act relating to and consequent upon vestry meetings convened upon such requisition as provided by the first-recited act shall be applicable to vestry meetings convened under this enactment.

IV. Every vacancy in any burial board shall be filled up by the vestry appointing the same within one month after such vacancy shall have happened, and immediately on the occurrence thereof the same shall be notified by the burial board to the churchwardens or other persons to whom it belongs to convene meetings of the vestry; and in case any such vestry shall neglect to fill up any such vacancy, the vacancy may be filled up by the burial board at any meeting thereof; and every person to be appointed to supply any such vacancy shall be a

(*a*) See note (*b*), p. 25.

(*b*) See note, p. 34.

(*c*) See Form 2, p. 261.

ratepayer of the parish for which the burial board is appointed; and every such board may act for any purpose, notwithstanding any vacancies therein. 18 & 19 Vict. c. 128.

V. So much of section thirteen of the said act of the fifteenth and sixteenth years of her Majesty as requires that the burial board shall meet once at least in every month shall be repealed. Monthly meetings of boards repealed.

VI. If the vestry of any parish shall refuse or neglect to authorise the expediture of such sums as the burial board of such parish shall have declared to be necessary for providing and laying out a burial ground, and building the necessary chapel or chapels therein, it shall be lawful for such burial board to represent such refusal or neglect to one of her Majesty's principal secretaries of state; and in case it shall appear to the secretary of state, after inquiry into the circumstances of the case, that the burial board are unable to provide such burial ground, or to proceed effectually in the execution of their duties, by reason of such refusal or neglect, it shall be lawful for such secretary of state, by warrant under his hand, to authorize such burial board, without further authority, sanction, or approval of or by such vestry, to expend such sums of money for providing and laying out a burial ground, and building the necessary chapel or chapels thereon, and to borrow and charge such money for all or any of such purposes, and to enter into and make such contracts and purchases, and do such other acts as under the sections nineteen, twenty, twenty-six, and forty-two of the said act of the fifteenth and sixteenth years of her Majesty might have been expended, borrowed, and charged, entered into, made, and done with the authority, approval, and sanction of such vestry, subject, nevertheless, to such limitation of amount or other limitation or restriction as such secretary of state may by his warrant prescribe; and all acts done in pursuance of such warrant shall be as valid and effectual as if the authority, approval, and sanction of such vestry had in every case been obtained. Sanction of vestry not required for expenditure and other acts of burial board in certain cases.

VII. All such fees, payments, and sums as may be fixed, settled, and received by any burial board under section thirty-four of the said act of the fifteenth and sixteenth years of her Majesty, shall be so fixed and settled subject to the approval of one of her Majesty's principal secretaries of state; and no such fees, payments, or sums shall be altered or varied without such approval (a). Fees, &c., to be subject to the approval of secretary of state.

VIII. It shall be lawful for one of her Majesty's principal secretaries of state from time to time to appoint and authorise any person to inspect any burial ground or cemetery, parochial or non-parochial, or place for the reception of bodies, to ascertain the state and condition thereof, and where regulations in relation thereto have been made or may be made by the secretary of state under the said acts or any of them, to ascertain Secretary of state may direct inspection of burial ground.

(a) See *post*, p. 235, scale of fees adopted by some boards; also suggested fees, p. 232.

18 & 19 VICT.
c. 128.

Penalty for
obstructing
inspector or
violating
regulations.

Part of sect.
24 of 15 & 16
VICT. c. 85,
repealed.

Burial
ground not
to be within
one hundred
yards of a
dwelling-
house.

If rate-
payers re-
solve, land
for new
burial
ground
may be con-
veyed and
settled as
old burial
ground.

How burial
grounds are
to be pro-
vided for
united
parishes.

whether such regulations have been observed and complied with; and if any person having the care of any such burial ground or cemetery or other place shall obstruct any person so authorised to inspect the same, or if any person having the care of any burial ground or place for the reception of bodies subject to such regulations as aforesaid shall violate or neglect or fail to observe and comply with any such regulation, or any regulation imposed by this act, every person so offending shall, upon summary conviction thereof before two justices, forfeit and pay a sum not exceeding ten pounds (a).

IX. So much of the said act of the fifteenth and sixteenth years of her Majesty as enacts that "no ground (not already used as or appropriated for a cemetery) shall be appropriated as a burial ground or as an addition to a burial ground under that act nearer than two hundred yards to any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house," shall be repealed; but no ground not already used as or appropriated for a cemetery shall be used for burials under the said act or this act, or either of them, within the distance of one hundred yards from any dwelling-house, without such consent as aforesaid.

X. If the ratepayers assembled at any vestry duly convened under the provisions of this act shall, in pursuance of public notice duly given in that behalf, resolve unanimously that any new burial ground to be provided for their parish, under the provisions of this act, shall be held and used in like manner and subject to the same laws and regulations in all respects as the existing burial ground or churchyard of the said parish, the land for such new burial ground may be conveyed and settled in accordance with such resolution, anything in this or the said recited acts notwithstanding (b), and in such case it shall not be necessary to set apart to remain unconsecrated any portion of the land so conveyed and settled: Provided always, that if at any time within ten years thereafter the vestry, duly convened under the provisions of this act in pursuance of public notice duly given in that behalf, should determine that an unconsecrated burial ground should be also provided for such parish, all the powers and provisions of the said recited acts and this act may be put in force and shall be applicable for providing such unconsecrated burial ground separately, in like manner as they might have been put in force and been applicable for providing an ordinary burial ground for such parish (c).

XI. Where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry (d) for purposes common to

(a) See note (b), p. 25.

(b) See Form 13, p. 268.

(c) See note, p. 60.

(d) See note, p. 38.

such several parishes or places, it shall be lawful for the vestry or any meeting in the nature of a vestry of such several parishes or places in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, to appoint a burial board, and from time to time to supply vacancies therein, and to exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers as under the said acts and this act are vested in the vestry of a parish or place separately maintaining its own poor; and the burial board so appointed shall have all the powers for providing a burial ground for the common use of such several parishes or places, and for facilitating interments, and otherwise, as if such several parishes or places had been a parish separately maintaining its own poor; and the expenses of the burial board appointed under this provision shall be borne by the several parishes or places for which such board is appointed, and shall be apportioned among them by such burial board in proportion to the value of the property in such several parishes or places as rated to the relief of the poor; and the sums required by the burial board in respect of the portion of such expenses to be borne by any such parish or place shall be paid out of the rates for the relief of the poor in such parish or place, in like manner as if such burial board had been appointed for such parish or place alone.

18 & 19 Vict.
c 128.

XII. The vestry or meeting in the nature of a vestry of any parish, township, or other district not separately maintaining its own poor, which has heretofore had a separate burial ground, may appoint a burial board, and from time to time supply vacancies therein, and may exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers as under the said acts and this act are vested in the vestry of a parish separately maintaining its own poor; and the burial board so appointed shall have all the powers for providing a burial ground and otherwise as if such parish, township, or other district had been a parish separately maintaining its own poor.

Burial boards may be appointed for township, &c., (not separately maintaining their own poor) which have had separate burial grounds.

XIII. Where any district (whether a parish or township or other subdivision) not separately maintaining its own poor, but forming part of a parish maintaining its own poor, or of an incorporation or other union maintaining the poor of the places comprised therein, by means of a common rate, shall have a burial board, or shall form part of a place or union of places not co-extensive with the area rated for the relief of the poor, and having one burial board, it shall be lawful for such respective burial board to issue their certificate (a) to the overseers of such parish, or the overseers or other persons authorised to make and collect or cause to be collected such common rate (as the case may be), for payment of the sums

Provision for expenses of burial boards of places not separately maintaining their own poor.

(a) See post, Form 6, p. 263.

18 & 19 VICT.
c. 128. required for the expenses of such burial board, or, where such district not separately maintaining its own poor forms part only of the area of the burial board, of the sums required in respect of the portion of such expenses to be borne by such district, in like manner as if such district had been a parish separately maintaining its own poor, and such overseers or persons authorised as aforesaid had been the overseers thereof; and such overseers or persons shall pay such sums as shall be required by such certificate, according to the directions of such burial board, and shall levy such sums as may be required for such payments to the burial board by an addition to the parish rate or common rate, so far as the same affects the district in respect of which such payments are required, or by separate rates to be made from time to time on such district; and for levying such additions or separate rates as aforesaid such overseers or other persons shall have the powers, remedies, and privileges, and proceed in the same manner, as in the case of the rates for the relief of the poor; provided that any such rates may (notwithstanding any restriction in relation to the parish rate or common rate) be made and levied at such times as may be necessary to provide for the payments aforesaid.

No obligation to build a chapel for persons not members of the Church of England when secretary of state, upon representation of three-fourths of vestry, declares it unnecessary.

XIV. And whereas doubts have arisen whether in all cases in which any burial board shall build in any burial ground provided by such board a chapel for the burial service according to the rites of the United Church of England and Ireland, such burial board is not also bound by law to build a chapel or chapels upon the unconsecrated part of such burial ground for the performance of burial service for persons not being members of the said church: be it enacted, that in any such case as aforesaid, where it shall appear to one of her Majesty's principal secretaries of state, upon the representation of a majority of the vestry of any parish, consisting of not less than three-fourths of the members of the same, that the building of a chapel upon the unconsecrated part of any such burial ground for the use of persons not being members of the said church is undesirable and unnecessary, it shall be lawful for the said secretary of state, if he shall think fit, to signify his opinion to that effect to the burial board of the parish, and the said burial board shall thereupon be relieved from all obligation to build the same (a): Provided always, that such secretary of state shall not signify his opinion as aforesaid unless it be shown to his satisfaction that notice of the intention to propose to such vestry to make such representation was given in manner required by law for notices of vestry meetings, and of the special purposes thereof.

Assessment to local rates not to be increased

XV. No land already or to be hereafter purchased or acquired, under the provisions of any of the acts hereinbefore recited, for the purpose of a burial ground (with or without any building

(a) See note (b), p. 71.

erected or to be erected thereon), shall while used for such purposes be assessed to any county, parochial, or other local rates at a higher value or more improved rent than the value or rent at which the same was assessed at the time of such purchase or acquisition.

18 & 19 Vict.
c. 128.

after purchases for the purposes of this or any former act.

Separate burial boards whose burial grounds adjoin may contract with each other for specific purposes.

XVI. That in any case where the burial boards appointed under the said recited acts of the fifteenth and sixteenth and the sixteenth and seventeenth years of her Majesty, or either of them, for any two parishes, shall provide separate burial grounds for such parishes respectively, and such burial grounds shall adjoin each other, it shall be lawful for the said burial boards to concur in building, either on one of the said burial grounds or partly on one of such grounds and partly on the other, such chapels as are authorised to be built by the said acts, and that such chapels when erected shall be used in common by both of such parishes, and be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively, in such manner, consistent with the provisions of the said acts or either of them, as the said burial boards shall mutually agree upon; and that the said burial boards may agree as to the proportions in which the expenses of erecting such chapel accommodation shall be borne by each of the said boards respectively; and the proportion for each of such parishes of such expenses shall be chargeable upon and paid in the same manner as the costs of providing burial grounds under the said acts; and where any burial board shall provide a burial ground, and cause chapels to be built thereon, pursuant to the said recited acts, it shall be lawful for such burial board, with the sanction of one of her Majesty's principal secretaries of state, to contract with any other burial board whose burial ground shall adjoin the one on which such chapels shall so have been built, for the use of such chapels, in such manner and on such terms as such respective burial boards shall mutually agree, and that during the existence of any such agreement such chapels shall be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively.

XVII. It shall be lawful for any burial board, with the sanction of one of her Majesty's principal secretaries of state, and subject to regulations approved of by him, to let any land purchased by and vested in them under this act or any of the acts hereinbefore recited, and which has not been consecrated, and in which no body has been at any time interred, and which is not for the time being required for the purposes of a burial ground, in such manner and on such terms as such board may see fit, but so nevertheless that power shall be reserved to such board to resume any such land which may be required for the purposes aforesaid, upon giving six months notice.

Burial board may let land not required for burials.

XVIII. In every case in which any order in council has been or shall hereafter be issued for the discontinuance of burials in any churchyard or burial ground, the burial board or church-

Burial board to keep in order closed

18 & 19 Vict.
c. 128.

burial
grounds, &c.

Act not to
abridge
powers of
local boards
of health,
&c.

Local boards
of health
to exercise
powers of
this act.

Acts to be
construed
together.

wardens, as the case may be (a), shall maintain such churchyard or burial ground of any parish in decent order, and also do the necessary repair of the walls and other fences thereof, and the costs and expenses shall be repaid by the overseers, upon the certificate of the burial board or churchwardens, as the case may be, out of the rate made for the relief of the poor of the parish or place in which such churchyard or burial ground is situate, unless there shall be some other fund legally chargeable with such costs and expenses (b).

XIX. Nothing in this act contained shall in anywise abridge, lessen, or defeat any power, right, or privilege of any local board of health being the burial board of a borough created or to exist under or by virtue of any local act of parliament (c).

XX. Any local board of health acting as or created a board under or by virtue of the powers of any local act of parliament shall and may have and exercise all the powers, rights, and privileges which by this act or by the secondly recited act are or can or may be had, enjoyed, or exercised by any burial board therein named.

XXI. The said acts of the fifteenth and sixteenth, sixteenth and seventeenth, and seventeenth and eighteenth years of her Majesty, and this act, shall be read and construed together as one act.

20 & 21 Vict. c. 35.

20 & 21 Vict.
c. 35.

An Act to amend an Act passed in the fifteenth and sixteenth Years of the Reign of her present Majesty Queen Victoria, intituled "An Act to amend the Laws concerning the Burial of the Dead in the Metropolis," so far as relates to the City of London and the Liberties thereof. [10th August, 1857.]

15 & 16 Vict.
c. 85.

WHEREAS an act was passed in the session of parliament holden in the fifteenth and sixteenth years of the reign of her present Majesty Queen Victoria, intituled "An Act to amend the Laws concerning the Burial of the Dead in the Metropolis," containing provisions for the appointment of burial boards in the several parishes in the metropolis, and conferring on such burial boards various powers and authorities to be exercised in some cases by the board alone, and in other cases by the boards with the approval of the vestries of their respective parishes :

And whereas it was by the said act enacted, that the provisions therein contained for the appointment of burial boards should not apply to any parish within the limits of the city of London, and the liberties thereof, but it should be lawful for

(a) See note, p. 31.

(b) See note, p. 31.

(c) See note (b), p. 44.

the mayor, aldermen, and commons of the city of London, in common council assembled, if and when they should see fit so to do, to authorise and direct the commissioners of sewers of the city of London to exercise for the said city and liberties all the powers and authorities vested in the burial boards under the said act; and thereupon such commissioners should have and exercise for and on behalf of the said city and liberties all such powers and authorities as were thereby vested in the burial board for any parish, or which might be exercised by such board with the approval of the vestry :

And whereas the commissioners of sewers of the city of London have been authorised by the said mayor, aldermen, and commons, in common council assembled, to exercise the powers and authorities vested in the burial boards under the said act, and have provided and constructed a large and spacious cemetery in the parish of Little Ilford in the county of Essex at an expense of seventy-five thousand pounds :

And whereas there are more than one hundred parishes within the city of London and the liberties thereof, and it has been found impracticable to obtain the requisite consents of all the vestries of such parishes to the uniform exercise of such powers or authorities by the said commissioners :

And whereas under the provisions contained in the thirty-seventh section of the said act (by which section power is given to the vestry of any parish, with consent of the bishop of the diocese, to revise and vary the fees payable to the incumbent under the provisions of the said act), a table of fees to be paid to incumbents upon interments which shall take place in the consecrated portion of the said cemetery at Little Ilford has been agreed to by the major part in number of the vestries of the parishes within the city of London and the liberties thereof, which table of fees has been approved of by the bishop of the diocese and is contained in the Schedule to this act :

And whereas it is expedient that the table of fees so agreed to should be made to apply to the whole of the parishes within the city of London and the liberties thereof, and that the said act should be amended by making the consent or approval of the major part in number of the vestries of the several parishes within the city of London and the liberties thereof sufficient to enable the commissioners of sewers of the city of London to exercise any power or authority conferred upon them by the said act, which requires for the exercise thereof the approval or consent of all the vestries of such parishes ; and also that the said act should be amended in manner hereinafter mentioned :

And whereas the purposes aforesaid cannot be effected without the authority of parliament : may it therefore please your majesty that it may be enacted ; and be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this

20 & 21 VICT.
c. 35.

The fees in
schedule to
be the fees
payable to
incumbents.

Approval of
a majority
of vestries in
the City of
London to
be sufficient.

Certain sec-
tions in
recited act
repealed as
to the City
of London.

Commis-

present Parliament assembled, and by the authority of the same, as follows :

I. The fees enumerated in the Schedule to this act shall be the fees which the incumbents of the parishes within the city of London and the liberties thereof shall be entitled to receive upon all interments in the consecrated portion of the said cemetery at Little Ilford, whether of the remains of parishioners or inhabitants of the said parishes, or of any other persons, and the same fees shall be in satisfaction of all claims on the part of such incumbents to fees of every description, whether in respect of burial in vaults or graves, or of the erection of monuments, gravestones, or tablets, or of monumental inscriptions in the said cemetery.

II. When and as often as the consent or approval of the vestries of the several parishes within the limits of the city of London and the liberties thereof is by the said recited act required for the purpose of enabling the commissioners of sewers of the city of London to exercise any power or authority given to or vested in them by the said act, or to execute any act, deed, matter, or thing under the authority of the said act, or to confirm or render valid any act, deed, matter, or thing, made or done, or agreed or proposed to be made or done, by the said commissioners, then and in every case the consent or approval of the major part in number of the vestries of the several parishes within the said city and liberties shall be sufficient to enable the said commissioners to exercise any such power or authority, or to do or execute any such act, deed, matter, or thing as aforesaid, and to confirm and render valid any act, deed, matter, or thing made or done, or agreed or proposed to be made or done, by them, and shall be as valid and effectual for all the purposes of the said act as if all the vestries of the said parishes within the city of London and the liberties thereof had actually consented to or approved thereof, or had confirmed the same : Provided that the parishes united under the provisions of the act of the twenty-second year of Charles the Second, chapter eleven, or united for ecclesiastical purposes by the provisions of that, or any other act or acts, shall, for the purposes of this act and the said recited act, be and be deemed one parish.

III. The provisions in the said recited act contained with reference to fees payable to incumbents, churchwardens, and others for parochial or other purposes, and also with reference to the powers given to vestries of revising and varying, with the consent of the bishop, the fees payable to incumbents, clerks, and sextons, or of substituting fixed payments in lieu thereof, which provisions are comprised in the thirty-second, thirty-third, thirty-fifth, thirty-sixth, thirty-seventh, and fiftieth sections of the said act, shall not apply to parishes situated within the city of London or the liberties thereof.

IV. It shall be lawful for the commissioners of sewers of

the city of London, acting as burial board for the several parishes within the city and the liberties thereof, with the approval of the major part in number of the vestries of such parishes, to settle and determine whether any and what fees shall be payable to the churchwardens or to the clerk or sexton of any parish within the city of London or the liberties thereof, or to any trustees or other persons for any parochial or other purpose whatever, on any interment, or for any monument, gravestone, tablet, or monumental inscription in any burial ground already provided or which may hereafter be provided by the said commissioners in pursuance of the powers contained in the said act, and such fees (if any) as shall be so settled and determined shall be paid to the commissioners, and shall be paid over by them to the parties for the time being entitled to receive the same.

V. All fees payable under the provisions of this act to incumbents of parishes within the city of London and the liberties thereof shall be paid by the commissioners of sewers of the city of London, by quarterly payments in each year, to such person or persons as shall by such incumbents, or the major part of them, be appointed from time to time to receive the same, and such fees shall be applied according to a scheme to be agreed upon by such incumbents, or the major part of them, with the consent of the bishop of the diocese.

VI. It shall be lawful for the said commissioners, subject and without prejudice to the fees payable to incumbents under the provisions of this act, and subject to the approval required by the seventh section of the act of eighteenth and nineteenth Victoria, chapter one hundred and twenty-eight, to settle a scale of fees for the burial in the cemetery at Little Ilford aforesaid of persons not residing within the city of London or the liberties thereof, and from time to time to revise and vary the same.

VII. The chaplain or chaplains who for the time being shall have been or shall hereafter be appointed under the thirty-ninth section of the said recited act, by the incumbents of the parishes within the city of London and the liberties thereof, for the performance of burials in the consecrated part of the said cemetery, shall conform to all such regulations of the commissioners of sewers for the city of London as shall not interfere with the performance of the funeral service according to the order of the United Church of England and Ireland.

VIII. In this act and in the said recited act, so far as the same applies to the city of London and the liberties thereof, the words "parishioner" or "inhabitant" shall mean a person inhabiting a house or dying in one of the parishes in the city of London or the liberties thereof; and when such house shall be situated in more than one parish, the parish in which the greater part of such house is situated shall be deemed to be the parish of which the person inhabiting the same is a parishioner or inhabitant.

20 & 21 Vict.
c. 35.

sioners,
acting as
burial
board, with
the approval
of the major
part of the
vestries, to
settle fees
payable to
church-
wardens,
&c.

Fees to be
paid by the
commis-
sioners.

Commis-
sioners to
settle fees
for burial of
persons not
residing in
London.

Chaplains of
cemetery to
conform to
regulations
of commis-
sioners.

Interpreta-
tion of
terms.

20 & 21 Vict.
c. 35.

Expenses of
act.

IX. All the costs, charges, and expenses of obtaining and passing this act shall be defrayed out of the consolidated rate authorised to be made by the city of London Sewers Act, 1848.

THE SCHEDULE.

	£	s.	d.
For each Burial in a Catacomb in consecrated ground	0	15	0
For each Burial in a Vault in ditto	0	10	0
For each Burial in a Brick Grave in ditto	0	7	6
For each Burial in a Private Grave in ditto	0	5	0
For each Burial in a Common Grave in ditto	0	2	6
For each Burial of a Pauper in ditto	0	1	0

20 & 21 Vict. c. 81.

20 & 21 Vict.
c. 81.

An Act to amend the Burial Acts.

[25th August, 1857.]

15 & 16 Vict.
c. 85.

16 & 17 Vict.
c. 134.

17 & 18 Vict.
c. 87.

18 & 19 Vict.
cc. 78, 128.

WHEREAS an act was passed in the session holden in the fifteenth and sixteenth years of her Majesty (chapter eighty-five), "to amend the laws concerning the burial of the dead in the metropolis;" and an act was passed in the session holden in the sixteenth and seventeenth years of her Majesty (chapter one hundred and thirty-four), "to amend the laws concerning the burial of the dead in England beyond the limits of the metropolis, and to amend the act concerning the burial of the dead in the metropolis;" and an act was passed in the session holden in the seventeenth and eighteenth years of her Majesty (chapter eighty-seven), "to make further provision for the burial of the dead in England beyond the limits of the metropolis;" and acts were passed in the session holden in the eighteenth and nineteenth years of her Majesty (chapters seventy-eight and one hundred and twenty-eight), "to amend the laws concerning the burial of the dead in England;" and whereas it is expedient to amend the said acts: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

Approval of vestries of majority of parishes sufficient for acts done for burial boards acting for more than two parishes.

I. All acts authorised to be done by any burial board, with the approval, sanction, or authority of the vestry or vestries of the parish or parishes for which such board is constituted, may, where a joint burial board is constituted for more than two parishes, be done with the approval, sanction, or authority (as the case may require) of the vestries of the majority of such parishes.

II. Where the vestries of two or more parishes have agreed to provide one burial ground for the common use of such parishes,

such vestries may, at any time before such burial ground has been provided, determine the union between such parishes under such agreement (a), and upon such union being so determined all the provisions of the said acts and this act shall be applicable with regard to such parishes and the respective burial boards thereof as if such union had not been formed, save that any expenses already properly incurred by the joint burial board for such parishes shall be defrayed as provided by the said acts.

2 & 21 Vict.
c. 81.

Joint burial
boards may
be dissolved

III. Any burial board may, if they see fit, with the approval of one of her Majesty's principal secretaries of state, provide more than one burial ground, and may, if they see fit, with such approval, instead of setting apart a portion of any burial ground for the purpose of such portion being used as unconsecrated ground, provide separate and distinct grounds to be used respectively as consecrated and unconsecrated burial grounds: where before the passing of this act any burial board has provided more than one burial ground, or has (instead of setting apart a portion of any burial ground for the purpose of being used as unconsecrated ground) provided separate and distinct grounds as consecrated and unconsecrated burial grounds, such burial board shall be deemed to have acted lawfully and in accordance with the said acts.

Burial
boards may
provide
more than
one burial
ground.

IV. In case it appear to her Majesty in council, upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local act of parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial grounds within the said district, it shall be lawful for her Majesty, with the advice of her privy council, in case her Majesty see fit so to do, to order that such local board shall be a burial board for the district of such local board, or that such commissioners shall be a burial board for the district of such commissioners, and thereupon such local board or such commissioners, as the case may be, shall be a burial board for such district accordingly; and the powers and provisions of the acts hereinbefore mentioned (except the provisions relating to the constitution or appointment and resignation of members of burial boards), and the provisions herein contained, shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead previously to interment which may be provided by such board or by such commissioners,

Local board
of health
may, by
order in
council, be
constituted
a burial
board.

(a) See note (a), p. 43.

20 & 21 Vict.
c. 81.

Burial board
may be esta-
blished for a
district not
maintaining
its own poor,
and which
has had no
separate
burial
ground.

in like manner as to any parish or parishes and the burial board thereof, and any burial ground and any such places as aforesaid provided by such last-mentioned board; save that no approval, sanction, or authorisation of any vestry shall be requisite (a): Provided always, that notice of such petition, and of the time when it shall please her Majesty to order the same to be taken into consideration by the privy council, shall be published in the London Gazette, and in one of the newspapers usually circulating in the district of such local board or of such commissioners, one month at least before such petition is so considered: provided also, that this enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning of the public health act, 1848.

V. The vestry, or meeting in the nature of a vestry, of any parish, new parish, township, or other district not separately maintaining its own poor, and which has had no separate burial ground, may appoint a burial board (b); and such vestry or meeting, and the burial board appointed by it, shall exercise and have all the powers which they might have exercised and had under the said acts and this act if such parish, new parish, township, or district had had a separate burial ground before the passing of the said act of the eighteenth and nineteenth years of her Majesty: Provided always, that all the powers of any other vestry or meeting and burial board, if any, shall then cease and determine (c), so far as relates to such parish, new parish, township, or district as aforesaid; and until a burial ground shall be so provided as aforesaid and consecrated for any new parish or district created or to be created pursuant to the provisions of the sixth and seventh Victoria, chapter thirty-seven, the seventh and eighth Victoria, chapter ninety-four, and the nineteenth and twentieth Victoria, chapter one hundred and four, or any or either of them, and to which the said acts, or any or either of them, may apply, the incumbent of such new parish or district (if any burial ground has been or shall be provided under the herein recited acts for the burial of the dead, or any or either of them, for any parish or parishes out of rates to which such new parish or district, or any part thereof, shall have contributed or contribute or be liable,) shall, with respect to the burial in such last-mentioned burial ground of the remains of the parishioners or inhabitants of such new parish or district, or of such part thereof as shall have contributed or contribute as aforesaid, as the case may be, perform the same duties, and have the same rights, privileges, and authorities, and be entitled to the same fees (d), and also the clerk and sexton of such new parish or district shall, when necessary, respectively perform the same duties, and be entitled

(a) See note, p. 46.

(b) See note (a), p. 41.

(c) See note b), p. 41.

(d) See note, p. 78.

to the same fees, in respect of such burials, as if the said burial ground were exclusively the burial ground of such new parish or district, subject nevertheless to all provisions to which the incumbents, clerks, and sextons of original parishes are respectively subject in and by the said burial acts, or any or either of them: Provided also, that nothing herein contained shall affect the rights or privileges of any existing incumbent, clerk, or sexton without the consent of such incumbent, clerk, or sexton respectively.

20 & 21 Vict.
c. 81.

VI. Where the guardians of any parish or union are possessed of any land suitable to the purposes of a burial ground, and the poor law board shall consent to the same being appropriated to the reception of the dead bodies of any poor persons whom such guardians shall be authorised or required by law to bury, it shall be lawful for the ordinary of the diocese wherein such land shall be situated, if he see fit, to consecrate the whole or a part of such land for burial purposes, and after consecration the guardians may lawfully direct any such dead body as aforesaid to be buried therein; and the land so consecrated shall not thenceforth be used for any other purposes than for burials according to the rites of the United Church of England and Ireland, and shall be kept in decent order; and the fences thereof, and any building or any other erection therein or adjoining thereto used for the performance of the burial service, shall be maintained in good repair by the guardians, out of the common fund of such parish or union: Provided nevertheless, that the guardians shall not be authorised to direct the body of any poor person to be buried in such grounds who, or whose husband, wife, or next of kin, shall, by letter addressed to the master of the workhouse or otherwise, have expressly desired burial to take place elsewhere (*a*).

Ordinary of diocese may consecrate whole or part of land belonging to any parish for the burial of poor persons.

VII. Where a burial ground has been provided for any parish under any of the acts commonly referred to or known as the Church Building Acts, and the same has been consecrated, and any money expended in providing such burial ground has been borrowed on the security of the church rates, it shall be lawful for the incumbent of the parish, with the consent of the ordinary and the burial board of such parish, or of any borough or district in which such parish is wholly or in part comprised, by instrument in writing under the hands and seals of such incumbent and ordinary, and under the seal of the said burial board, to declare that, in consideration of the payment of the debt by the said burial board, or of such sum as shall be mutually agreed upon, with the consent of the persons, signified in writing under their hands, to whom two-thirds of such debt is due, the said burial ground shall be vested in and be under the care and management of such burial board, and thereupon the

Provision for transfer to a burial board of a burial ground provided under Church Building Acts.

a With reference to burial of poor persons, see 18 & 19 Vict. c. 79, &c., p. 157.

20 & 21 VICT.
c. 81.

same shall be vested in and be under the care and management of such board, and shall be subject to the provisions of the hereinbefore recited acts and this act applicable to a consecrated burial ground or the consecrated part of any burial ground provided by any burial board; and any money borrowed as aforesaid, and remaining owing, and the interest due and to become due thereon, and all costs and expenses occasioned by the non-payment thereof, or incurred in providing such burial ground, and then remaining unpaid, shall be charged on and paid out of such rates or fund as under the said last-mentioned acts and this act would be chargeable with the expense of providing a burial ground by such board, and such declaration as aforesaid shall be registered in the registry of the diocese; and such board may, with the approval of the vestry, enlarge such burial ground, by the addition of ground to be used for burials otherwise than according to the rites of the Church of England, and to be used subject to the provisions of the acts herein recited and of this act in respect to the unconsecrated portions of burial grounds.

Vestry of parish in which burial ground is closed may purchase such burial ground if not belonging to parish.

VIII. It shall and may be lawful for the vestry of any parish in which any burial ground closed by order in council may be situate, and which does not belong to such parish, by resolution of the vestry at a meeting called for that purpose, to purchase such burial ground, and from the time of such purchase such burial ground shall belong to such parish, and be subject to all the conditions affecting the burial grounds of the parish in which the same is situate.

Burial boards not to be appointed for united parishes, &c., in cases provided for by 18 & 19 Vict. c. 128, without consent of secretary of state, where one of the places separately maintains its own poor or has a burial ground.

IX. And whereas by the said act of the eighteenth and nineteenth years of her Majesty, chapter one hundred and twenty-eight, it is enacted, that where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places, it shall be lawful for the vestry, or any meeting in the nature of a vestry, of such several parishes or places, in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, to appoint a burial board, and from time to time to supply vacancies therein, and to exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers as, under the acts therein recited and that act, are vested in the vestry of a parish or place separately maintaining its own poor: where any of the several parishes or places under the circumstances provided for in the said enactment separately maintains its own poor, or has a separate burial ground, it shall not be lawful for the vestry, or meeting in the nature of a vestry, of such several parishes or places, to appoint a burial board under the said

enactment without the approval of one of her Majesty's principal secretaries of state (a); and in case it appear to the secretary of state that any such parish or place has a sufficient burial ground, or that otherwise it would not be expedient that the powers given by the said enactment should be exercised in relation to such parish or place, the secretary of state may direct that such parish or place shall be excepted from the operation of the said enactment, and thereupon the same shall be excepted accordingly; and the inhabitants of the remaining parish or parishes, place or places, may assemble in vestry, or in a meeting in the nature of a vestry, from time to time, and in such vestry or meeting may proceed in like manner under the said acts and this act in all respects as if the inhabitants of such last-mentioned parish or parishes, place or places, exclusively had a vestry for their common purposes, and were wholly unconnected with the parish or place so excepted.

X. It shall be lawful for her Majesty, by order made by and with the advice of her privy council, on the representation of one of her Majesty's principal secretaries of state, from time to time to establish such regulations as to her Majesty may seem proper for the protection of the public health, and for the maintenance of public decency, in respect of all burials in common graves in any cemeteries named in schedule (B) to the act fifteenth and sixteenth Victoria, chapter eighty-five. and in respect of the like burials in any cemetery established under the authority of any local act of parliament: and every such order in council shall be published in the London Gazette; and all persons having the care of such cemeteries and burial grounds and places shall conform to and obey such regulations; and any such person who shall violate or wilfully neglect to observe any of such regulations shall, on summary conviction thereof before two justices of the peace, forfeit and pay any sum not exceeding ten pounds (b): Provided always, that no such representation shall be made in relation to any cemetery or burial ground until ten days previous notice in writing of the intention to make such representation shall have been given to the person or one of the persons having the control or care of such cemetery or burial grounds.

XI. It shall not be necessary to erect or maintain any wall or fence between the consecrated and the unconsecrated portions of any burial ground provided under the hereinbefore recited acts and this act, or any of them: Provided always, that in the case of any burial ground where there shall be no such wall or fence, it shall be the duty of the burial board having the care of such burial ground to place, and from time to time to repair and renew, such boundary marks of stone or iron as may be sufficient to show the boundaries of such consecrated and unconsecrated portions respectively.

20 & 21 Vict.
c. 81.

Orders in
council may
be made for
regulating
burial
grounds, &c.

No wall or
fence re-
quired
between the
consecrated
and uncon-
secrated
portions of
burial
ground.
Boundary
marks to be
provided.

(a) Previously given, 34 & 35 Vict. c. 33, s. 1, p. 188.

(b) For recovery of penalty, see note, p. 25.

20 & 21 VICT.
c. 81.

Capital.

XII. If upon the application in writing by any burial board to the bishop of the diocese for the consecration of a burial ground, declared in such writing to be in a fit and proper condition for the purpose of interment according to the rites of the United Church of England and Ireland, which application the board is required to make as soon as such ground is in such fit and proper condition, the said bishop shall refuse to consecrate the same, it shall be lawful for such burial board to appeal from such refusal to the archbishop of the province, who shall decide the matter in dispute; and if the said archbishop shall decide that the said burial ground is not in a fit and proper condition as aforesaid, then the board shall be bound to put the said ground in a fit and proper condition; and if the said archbishop shall decide that the said burial ground is in a fit and proper condition as aforesaid; and ought to be consecrated, such decision shall be communicated in writing by the archbishop to the bishop aforesaid; and if after such communication the said bishop shall not within one calendar month consecrate the said burial ground, the said archbishop shall, under his hand and seal, license the same for the interment of bodies according to the rites of the United Church of England and Ireland, and the licence of the said archbishop so granted as aforesaid shall, until such burial ground be consecrated, operate to make lawful the use of the same as if it had been consecrated.

Power to
incumbent
or curate to
bury in bu-
rial ground
certified by
secretary of
state prior
to consecra-
tion.

XIII. In any burial ground provided under the powers of the acts hereinbefore recited or this act, respecting which one of her Majesty's principal secretaries of state shall have certified that the necessary provisions have been complied with, it shall be lawful for the incumbent or incumbents of such parish or parishes for which such burial ground is provided, or his or their curate or curates, or such duly qualified person as any such incumbent may authorise, if such incumbent, curate, or such duly qualified person respectively think fit, to bury in such burial ground prior to the decision of the bishop or archbishop upon the application for the consecration thereof.

Section 32 of
3 G. 4, c. 126,
exempting
funerals
from tolls,
extended to
funerals in
burial
grounds
provided for
the parish,
although not
within its
limits.

XIV. Whereas by section thirty-two of the act of the third year of King George the Fourth, chapter one hundred and twenty-six, it is enacted, that no toll shall be demanded or taken by virtue of that or any other act or acts of parliament on any turnpike road of or from any inhabitant of any parish, township, or place going to or returning from attending the funeral of any person who shall die and be buried in the parish, township, or place in which any turnpike road shall lie, from and after the first day of July one thousand eight hundred and fifty-eight, or from and after the termination of any now existing lease of tolls expiring before that date; the said enactment shall extend to exempt from toll every person going to or returning from attending the funeral of any person who shall be buried in any burial ground provided for the parish, township,

or place in which he died under the acts hereinafore recited and this act or any of them, or under any other act of parliament, although such burial ground be not within the limits of the parish, township, or place for which it may have been provided, or in which the turnpike road shall lie (a).

20 & 21 Vict.
c. 81.

XV. That every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any register book of burials, kept according to the provisions of this act, or any part or certified copy of any part of such register, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register or certified copy thereof, or shall wilfully insert or cause to be inserted in any registry book or certified copy thereof any false entry of any burial, or shall wilfully give any false certificate, or shall certify any writing to be a copy or extract of any such register book knowing the same to be false in any part thereof, or shall forge or counterfeit the seal of any burial board, shall be guilty of felony (b).

Persons wilfully destroying, &c., register book of burials guilty of felony.

XVI. Whereas by the act of the fifty-second year of King George the Third, chapter one hundred and forty-six, section four, it is provided, that whenever the ceremony of burial shall be performed in any other place than the parish church or churchyard of any parish (or the chapel or chapelyard of any chapelry providing its own distinct registers), and such ceremony shall be performed by any minister not being the rector, vicar, minister, or curate of such parish or chapelry, the minister who shall perform such ceremony of burial shall on the same or on the next day transmit to the rector, vicar, or other minister of such parish or chapelry, or his curate, a certificate of such burial, and the rector, vicar, minister, or curate of such parish or chapelry shall thereupon enter such burial according to such certificate in the book kept pursuant to that act for such purpose: And whereas distinct registers are by law required to be kept in the burial grounds provided under the burial acts: The recited enactment of the said act of King George the Third shall not apply in any case where the ceremony of burial is performed in a burial ground provided or to be provided under the acts of her Majesty hereinafore recited and this act, or any of them.

Section 4 of 52 G. 3, c. 146, not to apply to burials in grounds provided under the burial acts.

XVII. No fees shall be charged or received by any burial board in respect of any service done or right granted in the unconsecrated portion of any burial ground provided by such board, but such as are identical in amount with the fees charged and received in respect of the same service or right in the consecrated portion of such ground, less any such portion of such corresponding fees or payments which may be received for or on account of any incumbent, churchwarden, clerk, or sexton, or of any trustee for or on behalf of any incumbent, churchwarden, clerk, or sexton.

Fees for service done in unconsecrated portion of burial ground to be identical as for consecrated portion.

(a) See note, p. 91.

(b) See note, p. 87.

20 & 21 Vict.
c. 81.

So much of
section 20 of
15 & 16 Vict.
c. 85, as to
payment of
money
borrowed,
repealed.
Clauses of
10 & 11 Vict.
c. 16, with
respect to
mortgages
incorpor-
rated.

Sinking
fund to be
provided for
paying off
mortgages.

Power to
burial
boards to
borrow
money on
terminable
annuities.

Power to
councils of
boroughs to
make a
separate
rate for
burial and
expenses.

Orders in
council may
be issued,
on repre-
sentation of
secretary of
state, so as
to prevent

XVIII. So much of section twenty of the firstly hereinbefore recited act as requires "that there shall be paid in every year, in addition to the interest of the money borrowed and unpaid, not less than one-twentieth of the principal sum borrowed, until the whole is discharged," shall be repealed, and the provisions of the other acts hereinbefore recited to which the said section has been extended shall be construed accordingly.

XIX. The clauses of the Commissioners Clauses Act, 1847, with respect to mortgages to be executed by the Commissioners, shall be incorporated with this act, and shall apply to mortgages and other securities to be executed by burial boards (a); and for the purposes of this act the expression "the Commissioners" where used in the said clauses shall mean the burial board acting in the execution of the said clauses and the acts hereinbefore recited or this act.

XX. Provided always, that for the purpose of providing a sinking fund for paying off the principal money borrowed on mortgages granted under any of the said acts or this act, the burial board shall once in every year set aside, out of the monies charged by such mortgages, such sum as they think proper, being a sum equal to or exceeding one-fiftieth part of the principal money so borrowed.

XXI. Any burial board or council of a borough may, for the purpose of raising money, instead of making mortgages under any of the said acts, grant terminable annuities for a life or lives, or for any number of years not exceeding thirty years (b), to be paid out of the like monies as provided with regard to the monies secured by such mortgages.

XXII. Any money required by the council of any borough for the purpose of defraying the expense of executing the acts hereinbefore recited, or any of them, or this act, or for paying any monies borrowed under such act, or any interest thereon, may be raised by such council, if they think fit, by means of a separate rate, to be called a burial rate, to be charged upon all property within such borough liable to be charged to the borough rate; and the council of such borough shall have all such powers for making and levying such rate, and all provisions shall be applicable in respect thereof, as in the case of a borough rate made under the act passed in the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six.

XXIII. It shall be lawful for her Majesty, upon the representation of one of her Majesty's principal secretaries of state, by and with the advice of her privy council, from time to time to order such acts to be done by or under the directions of the churchwardens or such other persons as may have the care of any vaults or places of burial, for preventing them from becoming

(a) See note, p. 55, and clauses at length. p. 121, Forms, p. 264.

(b) See post, form 9, p. 265.

or continuing dangerous or injurious to the public health (a); and every such order in council shall be published in the London Gazette, and such churchwardens or other persons shall do or cause to be done all acts ordered as aforesaid, and the expenses incurred in and about the doing thereof shall be paid out of the poor rates of the parish: Provided always, that no such representation shall be made until ten days previous notice of the intention to make such representation shall have been given to the churchwardens or other persons, or one of the churchwardens or other persons, having the care of the vaults or places of burial to which the representation relates.

XXIV. In all cases in which unconsecrated land or buildings is or are vested in a trustee or trustees, either under any local act or otherwise, for the purposes of a cemetery or burial ground, and burials in such cemetery or burial ground shall by order in council under the hereinbefore recited acts or any of them have been ordered to be wholly or partially discontinued, it shall be lawful for the trustee or trustees for the time being of such cemetery or burial ground, from time to time, with the sanction of one of her Majesty's principal secretaries of state, to let, demise, or lease any part or parts, in which no interment shall have taken place of such land or buildings, and to renew or accept surrenders of any leases or tenancies thereof, and to sell and absolutely dispose thereof for money in gross, or for any perpetual or other rent or rents to be made payable thereout, and by public auction or private contract, and to sell all or any such perpetual or other rent or rents for money in gross and in manner aforesaid, and for any of the purposes aforesaid to make and execute any contracts, conveyances, leases, or other assurances, and to take any measures and make any arrangements which may be deemed expedient; and upon any such lease or sale as aforesaid a grant or conveyance by such trustee or trustees alone shall be a sufficient assurance of the property thereby purported to be leased or sold, and the receipts of such trustee or trustees shall be effectual discharges for the monies therein expressed to have been received, and shall absolve any lessee or purchaser from having to see to or being answerable for the application of such monies; and the net monies to be received by such trustee or trustees under any of the preceding powers shall be applied by them in discharge of any incumbrances affecting such cemetery or burial ground, and any debts which such trustee or trustees may have properly incurred in their fiduciary capacity; and any residue of such monies shall, where such land or buildings shall have been held in trust for any parish, be applied in such manner, for the benefit of such parish, as the vestry of such parish shall direct; but where such land or buildings shall have been held in trust for the benefit of private persons, such residue shall be divided by such

0 & 21 Vict.
c. 81.

vaults, &c.,
being dan-
gerous to
health.

Trustees of
closed ceme-
teries em-
powered,
with sanc-
tion of
secretary of
state, to let,
lease, or sell
portions
thereof
which have
not received
interments.

(a) See notes, pp. 22, 92.

20 & 21 Vict.
c. 81.

Bodies not
to be re-
moved from
burial
grounds,
save under
faculty,
without
licence of
secretary of
state.

Burial
boards may
in certain
cases pur-
chase ceme-
teries which
have been
closed.

Orders in
council to
remain in
force.

Resolutions,
&c., of
vestries not
to be void
by reason of
irregularity
of notices,
&c.

trustee or trustees rateably among the cestuis que trusts ; and it shall be lawful for such trustee or trustees so to apply any reserved fund in his or their hands.

XXV. Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may have been interred in any place of burial, without licence under the hand of one of her Majesty's principal secretaries of state, and with such precautions as such secretary of state may prescribe as the condition of such licence (a) ; and any person who shall remove any such body or remains, contrary to this enactment, or who shall neglect to observe the precautions prescribed as the condition of the licence for removal, shall, on summary conviction before any two justices of the peace, forfeit and pay for every such offence a sum not exceeding ten pounds.

XXVI. Where any cemetery in which burials have, by order in council, under the hereinbefore recited acts or any of them, been ordered to be discontinued, is adjoining or near to any land appropriated or about to be appropriated by any burial board for the purposes of a burial ground, and appears to such board eligible for the purpose of appropriating or erecting buildings for or making approaches to such burial ground, it shall be lawful for such board, with the approval of the vestry or respective vestries, to purchase such cemetery ; and where in the like case any cemetery has been so purchased before the passing of this act, the purchase thereof shall be deemed to have been lawful : Provided always, that, notwithstanding such purchase, such order in council shall remain in full force and effect in relation to such cemetery.

XXVII. No resolution or proceeding of any vestry, or meeting in the nature of a vestry, for the purposes of the said recited acts and this act, or any of them, shall be void or voidable by reason of any defect or irregularity of or in notice of such vestry or meeting, or any other error in form in the calling of such vestry or meeting, or in the proceedings thereat, unless notice in writing of such defect or irregularity or error shall have been given at such vestry or meeting, or within seven days after the day of the holding thereof, to the churchwardens or other persons to whom it belongs to call meetings of such vestry, or such meeting in the nature of a vestry, who shall thereupon call another meeting for the purpose of considering the previous resolution or proceeding or the matter thereof ; and no such resolution and proceeding made or taken at any such vestry, or meeting in the nature of a vestry, before the passing of this act, which shall not have been objected to by notice in writing to such churchwardens or persons as aforesaid, shall be deemed invalid by reason of any such defect, irregularity, or error.

(a) See notes, pp. 22, 92.

XXVIII. In the construction of this act the expression "burial board" shall mean a burial board constituted under the hereinbefore recited acts or any of them, or under this act.

20 & 21 Vict.
c. 81.

XXIX. That the expression "borough" whenever used in the said act of the seventeenth and eighteenth years of her said Majesty shall be construed to include any city, borough, port, cinque port, or town corporate named in the schedules annexed to an act passed in the sixth year of the reign of King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and to any city, borough, port, cinque port, or town corporate incorporated by charter granted or to be granted in pursuance of that or any subsequent act; and the words "town council of any borough," or "council of any borough," wherever used in the said act of the seventeenth and eighteenth years of her said Majesty, shall (as well with respect to all past as to future proceedings under the same act, and for the purpose of confirming and making valid all such past proceedings), be construed to mean town council or council of any city, borough, port, cinque port, or town corporate.

"Burial board."
Construc-
tion of
certain
expressions
used in 17 &
18 Vict. c.
87.

XXX. The hereinbefore recited acts and this act shall be construed together as one act.

Recited
acts, and
this to be as
one.

22 VICT. c. 1.

An Act more effectually to prevent Danger to the Public Health from Places of Burial.

22 VICT. c. 1.

[25th March, 1859.]

WHEREAS by section twenty-three of an act passed in the session holden in the twentieth and twenty-first years of her Majesty, chapter eighty-one, "to amend the burial acts," it was enacted that it should be lawful for her Majesty, upon the representation of one of her Majesty's principal secretaries of state, by and with the advice of her privy council, from time to time to order such acts to be done by or under the directions of the churchwardens or such other persons as might have the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health; and such churchwardens or other persons should do or cause to be done all acts ordered as aforesaid, and the expenses incurred in and about the doing thereof should be paid out of the poor rates of the parish: and whereas it is expedient to amend the said enactment as hereinafter mentioned: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

20 & 21 Vict.
c. 81.

22 VICT. c. 1.

Where persons having the care of a place of burial neglect to comply with order in council, the churchwardens may act in their stead.

I. Where it appears to one of her Majesty's principal secretaries of state, on the representation of any person authorised by him to inspect any vault or place of burial in relation to which an order in council has been or shall have been issued under the said recited enactment, that any acts which by such order in council are ordered to be done by or under the direction of persons other than churchwardens having the care of such vaults or place of burial are not done or performed within a reasonable time, and according to the intent of such order in council, it shall be lawful for such secretary of state, by writing under his hand, to authorise and direct the churchwardens of the parish in which such vaults or place of burial may be situate forthwith to do or complete the acts (a) in such order in council mentioned, or such of them as remain undone, and such order of the secretary of state shall be obeyed by such churchwardens, and they and all persons acting under their direction shall have the same power of entering and doing all such acts upon the premises to which the order in council relates as if the said acts had by the order in council been directed to be done by such churchwardens, and such vaults or place of burial had been under their care; and any person who shall obstruct such churchwardens or any others acting under their direction in relation to the premises, or remove or interfere with the works done by such churchwardens, shall be guilty of a misdemeanor.

This and recited act to be as one.

II. This act shall be read together with the said act of the twentieth and twenty-first years of her Majesty and the burial acts therein mentioned as one act.

23 & 24 VICT. c. 64.

23 & 24 VICT.
c. 64.

An Act to make further Provision for the Expenses of Local Boards of Health and Improvement Commissioners acting as Burial Boards. [6th August, 1860.]

20 & 21 Vict.
c. 81.

WHEREAS by an act passed in the session holden in the twentieth and twenty-first years of her Majesty (chapter eighty-one), "to amend the burial acts," it is provided that upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers and acting under or by virtue of the powers of any local act of parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial grounds within the said district, it should be lawful for her Majesty, with the

(a) See note (a) p. 22.

advice of her privy council, in case her Majesty see fit so to do, to order that such local board should be a burial board for the district of such local board, or that such commissioners should be a burial board for the district of such commissioners, and that thereupon such local board or such commissioners, as the case might be, should be a burial board for such district accordingly: and whereas under "the Local Government Act, 1858," a local board may, at the option of the vestry, be the burial board in certain cases (a): and whereas it is expedient that such local boards and commissioners respectively, when constituted burial boards, should be authorised to provide for their expenses as hereinafter mentioned: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in the present parliament assembled, and by the authority of the same, as follows:

23 & 24 Vict.
c. 64.

21 & 22 Vict.
c. 98, s. 49.

I. Any money required by any local board constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the burial acts and of this act in the district for which they may have been so constituted a burial board, or for paying any monies borrowed or annuities granted under the authority of the said acts, or any interest on monies borrowed, or for providing a sinking fund for the repayment of such monies, may, if the local board so think fit, be paid out of the general district rates leviable within such district; and such local board may levy as part of the general district rate, or by a separate rate, under the name and designation of a burial rate to be assessed and recovered in like

Expenses of local board constituted a burial board may be paid out of general district rate, or by a separate rate.

(a) In any district where a vestry of any one or more parish or place comprised therein having a known or defined boundary adopts the act passed in the twentieth and twenty-first year of the reign of her present Majesty, chapter eighty-one, and intitled *An Act to amend the Burial Acts*, the local board may, at the option of such Vestry, be the burial board for the execution of the said act within such parish or parishes, place or places, so adopting the act as aforesaid, and shall thereupon have all the powers, duties, rights, and obligations of a burial board under the said act; and all expenses incurred by the local board in carrying into execution the powers given to them by the said act shall be defrayed out of rates to be levied on such parish or parishes, place or places, so adopting the act as aforesaid, in the same manner as general district rates are to be levied under the provisions of this act; and all receipts by them, by reason of the exercise of such powers, shall be carried to the credit of such parish or parishes, place or places so adopting the act as aforesaid: Provided nevertheless, that in case the parish or parishes, place or places comprised in such district so adopting the Act as aforesaid shall have been declared a ward or wards for the election of members of the local board, and members shall have been elected by and for such ward or wards, the last-mentioned members shall form the burial board for such parish or parishes, place or places so formed into a ward or wards as aforesaid, instead of the members of the said local board, and shall have all the like powers, duties, rights, and obligations of the burial board under the said act of the twentieth and twenty-first years of the reign of her present Majesty, chapter eighty-one (21 & 22 Vict. c. 98, s. 49). See note (b), page 44.

23 & 24 Vict.
c. 64.

Expenses of improvement commissioners, when acting as a burial board, may be paid out of improvement rate, or by a separate rate.

Separate accounts to be kept.

As to appointment of burial boards without consent of secretary of state.

manner as a general district rate within the district for which they act as a burial board, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them (a)

II. Any money required by any such commissioners as aforesaid who shall have been constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the burial acts in the districts for which they may have been so constituted a burial board, or for paying any monies borrowed, or annuities granted under the authority of the said acts, or any interest on monies borrowed, or for providing a sinking fund for the repayment of such monies, may, if the commissioners so think fit, be paid out of the improvement rate leviable within such district, and the commissioners as such burial board may levy as part of the improvement rate, or by a separate rate under the name and designation of a burial rate, to be assessed and recovered in like manner as an improvement rate, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them.

III. The local board and the commissioners respectively who may have been constituted a burial board shall keep distinct accounts of their receipts and expenditure in the exercise of their functions as such burial board; and where their expenses are defrayed by monies raised under the provisions of this act, such accounts shall be audited in the same manner as other accounts of the receipts and expenditure of such local board and commissioners respectively, and any surplus of the monies raised by any rate made under this act, and of the income of any burial ground provided by means of monies raised or paid under the provisions of this act, which may remain after payment of the expenses and monies which should be defrayed or paid under the burial acts, shall be applied in aid of the general district rate or improvement rate, as the case may be, levied within the district, which shall have been or might have been charged with a separate rate under this act.

IV. Where any parish or place has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, it shall not be lawful for the vestry or meeting in the nature of a vestry for such entire parish or place to appoint a burial board without

(a) All local boards of health, constituted burial boards, may from time to time repair and uphold the fences surrounding any burial ground which shall have been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial grounds, and placing them in a proper sanitary condition; and where such burial boards are a local board of health they may from time to time pass bye laws for the preservation and regulation of all burial grounds within their limits, and the expense of carrying this section into execution may be defrayed out of any rates authorised to be levied by any local board, constituted a burial board 24 & 25 Vict. c. 61, s. 21).

the approval of one of her Majesty's principal secretaries of state (a). 23 & 24 VICT.
c. 64.

25 & 26 VICT. c. 100.

An Act to authorise Improvement Commissioners acting as Burial Boards to mortgage certain Rates for the Purposes of the Burial Acts. 25 & 26 VICT.
c. 100. [7th August, 1862.]

WHEREAS by an act passed in the session holden in the twenty-third and twenty-fourth years of the reign of her Majesty (chapter sixty-four), to make further provision for the expenses of local boards of health and improvement commissioners acting as burial boards, it was enacted, that any money required by any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local act of parliament for the improvement of any town, parish, or borough, who should have been constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the burial acts in the district for which they may have been so constituted a burial board, or for paying any monies borrowed or annuities granted under the authority of the said acts, or any interest on monies borrowed, or for providing a sinking fund for the repayment of such monies, might, if the commissioners thought fit, be paid out of the improvement rate leviable within such district; and the commissioners, as such burial board, might levy as part of the improvement rate, or by a separate rate under the name and designation of a burial rate, to be assessed and recovered in like manner as an improvement rate, such sums of money as should be from time to time necessary for the purposes aforesaid or any of them: and whereas doubts have arisen whether under such provisions the improvement rate or burial rate can be legally mortgaged or assigned as a security for the payment of the sums referred to in the said act, and it is expedient that the commissioners acting as such burial board should have the power of mortgaging the said rates: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

I. Any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local act of parliament for the improvement of any town, parish, or borough, who shall have been constituted a burial board for any district, may, with the approval of the commissioners of her Majesty's treasury, from time to time borrow at interest on mortgage of the improvement rate and burial rate, or either of them, leviable within Commis-
sioners,
with con-
sent of trea-
sury, may
mortgage
improve-
ment rate
and burial
rate, or
either.

(b) Previously given, 34 & 35 Vict. c. 33, s. 1, p. 188.

25 & 26 Vict.
c. 100. the district, such sums of money as may be required by the burial board for the purposes of the burial act within the district.

Certain provisions of
10 & 11 Vict.
c. 16, to
apply to this
act. II. The clauses (a) and provisions of "the Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the commissioners, shall be incorporated with this act, and shall be applicable to all mortgages created under the provisions thereof.

34 & 35 VICT. c. 33.

An Act to explain and amend the Burial Acts.

[29th June, 1871.]

34 & 35 VICT.
c. 33.

20 & 21 Vict.
c. 81.

23 & 24 Vict.
c. 64.

WHEREAS under the Burial Acts it is not lawful for a vestry or meeting in the nature of a vestry in certain cases to appoint a burial board without the approval of one of her Majesty's principal Secretaries of State, and doubts have arisen whether such approval is to be given before or after the appointment of a board, and it is expedient to remove such doubts:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Approval of
secretary of
state to ap-
pointment
of burial
board.

I. Where the approval of one of her Majesty's principal Secretaries of State to the appointment of a burial board by a vestry or meeting in the nature of a vestry is required under the Burial Acts, such vestry or meeting in the nature of a vestry shall not, after the passing of this act, appoint such board until a resolution of such vestry or meeting declaring the expediency of such appointment has been passed, and notice thereof sent to one of her Majesty's principal Secretaries of State, and the same has been approved of by the Secretary of State, and approval of such resolution shall be deemed to be approval of the appointment of the board.

The Secretary of State before giving such approval may require notice of such resolution, in such form and containing such particulars as he may direct, to be published in such manner as he may think sufficient for giving notice thereof to all persons interested.

Provided that where the approval of one of her Majesty's principal Secretaries of State has been given before the passing of this act to the appointment of any burial board, that approval shall be valid whether it has been given before or after the date of such appointment.

Act to be
construed
with acts in
schedule.

II. This act shall be construed as one with the acts mentioned in the schedule to this act, and those acts and this act may be cited together as the Burial Acts, 1852 to 1871, and

each of them may be cited as the Burial Act of the year in 34 & 35 VICT. which it was passed.

c. 33.

Short title.

SCHEDULE.

THE BURIAL ACTS, 1852 TO 1871.

Session and Chapter.	Title of Act.
15 & 16 Vict. c. 85.	An Act to amend the laws concerning the Burial of the Dead in the Metropolis.
16 & 17 Vict. c. 134.	An Act to amend the laws concerning the Burial of the Dead in England, beyond the limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis.
17 & 18 Vict. c. 87.	An Act to make further provision for the Burial of the Dead in England beyond the limits of the Metropolis.
18 & 19 Vict. c. 128.	An Act further to amend the laws concerning the Burial of the Dead in England.
20 & 21 Vict. c. 81.	An Act to amend the Burial Acts.
22 Vict. c. 1.	An Act more effectually to prevent danger to the Public Health from places of Burial.
23 & 24 Vict. c. 64.	An Act to make further provision for the expenses of Local Boards of Health and Improvement Commissioners acting as Burial Boards.
25 & 26 Vict. c. 100.	An Act to authorize Improvement Commissioners acting as Burial Boards to mortgage certain rates for the purposes of the Burial Acts.

SCOTLAND (a).

18 & 19 VICT. c. 68.

18 & 19 VICT. c. 68. *An Act to amend the Laws concerning the Burial of the Dead in Scotland.* [23rd July, 1855.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :—

Short title. I. This Act may be cited as the "Burial Grounds (Scotland) Act, 1855."

Parochial board to carry into execution this act II. In the execution of this act in parishes not within the limits prescribed or established under the act passed in the session of parliament held in the seventeenth and eighteenth years of the reign of her present Majesty, intituled "An Act for the Valuation of Lands and Heritages in Scotland," of any burgh sending or contributing to send a member to parliament, "parochial board" shall be held to signify the parochial board for the management of the poor, where such parishes are not combined for such management, and where such parishes are so combined the parochial board under this act shall signify and be composed of such members of the combined board as are assessed for relief of the poor either in respect of occupancy or ownership within each parish respectively; and the manner of holding and of transacting business at meetings of such parochial boards under this act shall be similar to the manner in use in respect of the management of the poor; and in parishes within the aforesaid limits of any burgh aforesaid the town

(a) The main principles of the Burial Grounds (Scotland) Act are the same as those contained in the acts for England. Having been enacted subsequently, and after much experience had been obtained in the working of the English statutes, the Scotch Act is both more simple and more complete than the earlier productions of legislative wisdom. The differences being chiefly verbal, except in the constitution of the local administrative bodies, which are sufficiently apparent in the sections relating to that subject, it has not been thought necessary to do more than to append a few references to points of similarity in former portions of this work, and to give a summary of such incorporated clauses from other statutes as may not have been previously printed at length. Such of the English Forms and Instructions as are applicable may easily be adapted to the circumstances of each case.

council of the burgh shall be held to be the parochial board of such parish under this act: Provided always, that where, within the aforesaid limits of any burgh aforesaid, there is included a burgh of regality, the magistrates of such burgh of regality shall, notwithstanding anything hereinbefore enacted, be held to be the parochial board of any parish within or forming part of such burgh of regality. 18 & 19 Vict. c. 68.

III. Where any parish is partly within and partly without the limits of such burgh aforesaid, it shall be lawful for the sheriff of the county within which such parish or the greater part thereof is situated, on application to him by any two members of the parochial board of such parish, or by any ten persons assessed for relief of the poor within such parish, or by any two or more householders residing within one hundred yards of any burial ground or proposed burial ground within such parish, and on giving notice by advertisement in the Edinburgh Gazette and such newspapers of local circulation as he may deem fitting, and hearing any parties having interest, to determine whether such parish shall be held to be a parish within or without the limits of the said burgh for the purposes of this act, and an interlocutor so determining shall receive effect and be as valid as if the same was set forth in this act; and it shall not be competent to make any new application to the sheriff for his determination in respect to such parish till after the lapse of five years from the date of his last determination respecting the same. Provision as to parishes partly burghal.

IV. It shall be lawful for any two members of the parochial board of any parish in Scotland, or for any ten persons assessed for relief of the poor within such parish, or for any two householders residing within one hundred yards of any burial ground or proposed burial ground, to present a petition to the sheriff of the county within which such burial ground or proposed burial ground is situated, setting forth that a burial ground within such parish or such distance is or would be dangerous to health, or offensive or contrary to decency, and the sheriff shall thereupon fix a day, being not less than ten nor more than twenty days after such petition is presented, for inquiring into the allegations contained therein, and shall appoint intimation thereof to be made by advertisement in the Edinburgh Gazette and in such newspapers of local circulation as he shall deem fitting, and on hearing the petition shall permit all parties whom he shall judge to have an interest to appear and be heard in such manner as he shall deem fitting, and if on such hearing he shall be of opinion that any of the aforesaid allegations are true, he shall pronounce an interlocutor to such effect, and shall transmit a copy thereof to one of her Majesty's principal secretaries of state: Provided that it shall not be competent to present any such petition to the sheriff, except with concurrence of the procurator fiscal, till after the lapse of five years from the date of any petition to the like effect having been dismissed. Proceeding on complaints of danger to health.

18 & 19 Vict.
c. 68.

On representation of secretary of state, her Majesty in council may restrain the opening of new burial grounds, and order discontinuance of burials in specified places

V. It shall be lawful for her Majesty, from time to time, by order in council, upon the representation of one of her principal secretaries of state that a copy of such interlocutor of a sheriff has been received by him, in pursuance thereof to order that no new burial ground shall be opened within certain limits, specified in such order, save with the previous approval of one of such secretaries of state, or (as the case may require) that after a time mentioned in the order burials within certain limits, or in certain burial grounds or places of burial, shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and such order in council shall thereupon have like force and effect as if the same were embodied in this act: Provided always, that notice of such representation, and of the time it shall please her Majesty to order the same to be taken into consideration by the privy council, shall be transmitted to the crown agent in Edinburgh and the sheriff clerk of the county in which such burial ground is situated; and the same shall be by them respectively published in the Edinburgh Gazette, and fixed on the doors of the church of or on some other conspicuous places within the parishes affected by such representation, one month before such representation is so considered.

Penalties.

VI. Every person who shall after the time mentioned in such order in council bury any body, or in anywise act or assist in or permit the burial of any body, in any way contrary to such order, shall be liable for each such offence to be imprisoned for any period not exceeding two calendar months, or to pay a penalty not exceeding twenty pounds.

Order not to extend to burial grounds of Quakers or Jews, unless expressly included.

VII. No such order in council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order, or shall be deemed to extend to any non-parochial burial ground, being the property of any private person, unless the same be expressly mentioned in such order.

Saving of certain rights to bury in vaults, &c.

VIII. Provided always, that, notwithstanding any such order in council, where at the time of the passing of this act any person shall be entitled to any right of interment in or under any church or chapel or within any churchyard or burial ground affected by such order, it shall be lawful for one of her Majesty's principal secretaries of state, from time to time, on application being made to him, and on being satisfied that the exercise of such right will not be injurious to health, to grant licence (a) for the exercise of such right during such time and subject to such conditions and restrictions as such secretary of state may think fit, but such licence shall be revocable at any time, and shall not give to the holder of such right, or to any other party,

(a) See note (a), p. 27.

any other power than he would have had if this act had not been passed. 18 & 19 Vict.
c. 68.

IX. Although no burial ground in the parish has been closed by order in council, the inspector of the poor of any parish not within burgh, and the town clerk in the case of any parish within burgh, shall be bound, upon the requisition in writing of ten or more persons assessed for relief of the poor of the parish, or upon the requisition in writing of any two or more members of the parochial board of the parish, to convene a special meeting of the parochial board of such parish, for the purpose of determining whether a burial ground shall be provided under this act for the parish; and if a majority of such meeting of the parochial board shall resolve that a burial ground shall be provided under this act for the parish, such new burial ground shall be provided in the same manner as if an old burial ground had been closed by order in council. Upon requisition of ratepayers or members of parochial board meeting, a parochial board to be convened, to determine whether burial ground shall be provided.

X. Whenever any burial ground shall have been closed by order in council, the parochial board shall forthwith proceed to provide a suitable and convenient burial ground for the parish, and to make arrangements for facilitating interments therein; and in the event of a suitable burial ground not being provided by the parochial board within six months after such order or requisition as aforesaid, it shall be lawful for such board, or for any ten or more persons assessed for relief of the poor in the parish, or any two or more members of the parochial board, to apply by summary petition to the sheriff to have a suitable portion of land designated for the purpose of a burial ground; and the sheriff shall examine such witnesses and make such inquiry as he shall think proper, and shall keep a note of such evidence as may be adduced, and, if he thinks fit, shall thereupon proceed to designate and set apart such portion as he may deem necessary of any lands in such parish suitable for the purpose, not being part of any policy, pleasure ground, or garden attached to any dwelling-house: Provided always, that due intimation shall have been given of not less than ten days to the owner of such lands, that he may be heard for his interest before such designation is actually made, subject always to an appeal to any of the lords ordinary of the court of session, whose decision shall be final, such appeal always being presented within fourteen days of the date of the sheriff's judgment; and provided also, that no land shall be so designated nearer than one hundred yards to any dwelling house without the consent in writing of the owner of such dwelling house; and on such land being so designated the parochial board shall proceed to acquire the same in manner hereinafter provided. When burial grounds are closed by order in council, board to provide suitable burial grounds, &c.

XI. Any burial ground may be provided under this act either within or without the limits of the parish for which the same is provided; but no ground not already used as or appropriated for a cemetery shall be appropriated as a burial ground, or as an addition to a burial ground, under this act, nearer than one Consent of owners of houses to new burial grounds, where necessary.

18 & 19 VICT.
c. 68.

Board may
purchase
land for
cemetaries,
or contract
with
cemetery
companies.

Certain pro-
visions of
8 & 9 Vict.
c. 19, incor-
porated
with this
act.

hundred yards to any dwelling house, without the consent in writing of the owner, lessee, and occupier of such dwelling house.

XII. For the providing such burial ground, it shall be lawful for the parochial board of the parish to contract for and purchase or take any lands and buildings thereon for the purpose of forming a burial ground, or for making additions to any burial ground to be formed or purchased under this act, as such board may think fit, or to purchase from any company or persons entitled thereto any cemetery or cemetaries, or part or parts thereof, subject to the rights in vaults and graves and other subsisting rights which may have been previously granted therein: Provided always, that it shall be lawful for such board, in lieu of providing any such burial ground, to contract with any such company or persons entitled as aforesaid for the interment in such cemetery or cemetaries, and either in any allotted part of such cemetery or cemetaries or otherwise, and upon such terms as the parochial board may think fit, of the bodies of persons who would have had rights of interment in the burial grounds of such parish.

XIII. "The Lands Clauses Consolidation (*Scotland*) Act, 1845," except the provisions of that act "with respect to the provisions to be made for affording access to the special act by all parties interested," shall be incorporated with this act; and, for the purposes of this act, the expression "the promoters of the undertaking," wherever used in the said "Lands Clauses Consolidation (*Scotland*) Act, 1845," shall mean any parochial board under this act: Provided always, that the provisions in the said act "with respect to the purchase and taking of lands otherwise than by agreement" shall have effect only in respect of such lands as the sheriff of the county shall have designated as fitting for a burial ground in manner aforesaid: Provided further, that the provisions in the said act "with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, but which shall not be required for the purposes thereof," shall be held to apply only to such lands or portions thereof in which no burial shall have taken place, and such provisions shall not be restricted in operation to any fixed period after the purchase of such lands (a).

(a) The provisions of the Lands Clauses (*Scotland*) Act, 8 & 9 Vict. c. 19, are similar in principle to the act for England, c. 18, of same session. The chief portion of parallel English clauses to those here incorporated will be found at length, p. 102. With respect to lands taken otherwise than by agreement, under 8 & 9 Vict. c. 19, ss. 17—66, notice must be given to all parties interested of willingness to treat for lands required; and if parties fail to send in their claims within twenty-one days, the amount of compensation shall be settled as in cases of dispute, which may be referred to arbitration, or, if claim does not exceed £50, to be settled by the sheriff, who may summon and examine the parties upon oath, and whose determination shall be final. If claim exceed £50, dispute may be referred to arbitration *ii*.

XIV. The parochial boards of any parishes which shall have respectively resolved to provide burial grounds under this act may concur in providing one burial ground for the common use of such parishes, in such manner, not inconsistent with the provisions of this act, as they shall mutually agree on, and may agree as to the proportions in which the expenses of such burial ground shall be borne by such parishes; and the proportion of each of such parishes of such expenses shall be raised by assessments in manner after mentioned; and, according and subject to the terms which shall have been so agreed on, the parochial boards for such parishes respectively shall, for the purpose of providing and managing such one burial ground, and taking and holding land for the same, act as one joint board for all such parishes, and may have a joint office, clerk, and offices, and all the provisions of this act shall apply to such joint board accordingly.

18 & 19 Vict.
c. 68.

Parochial boards may concur in providing a burial ground for the common use of their parishes.

XV. When any burial ground shall have been provided in terms of this act, such burial ground shall, from and after such time as the sheriff of the county shall appoint, be deemed the burial ground, or part thereof, of the parish for which the same is provided; and where the same is provided for two or more parishes such burial ground shall be in law as if such parishes were one parish, and as if such burial ground were the burial ground of such one parish; and the parishioners and inhabitants of such parish, or of each of such parishes, shall have the same rights of sepulture in such burial ground as they respectively would have had in the burial ground or burial grounds in and

Burial ground to be the burial ground of the parish or parishes for which it is provided.

manner specifically prescribed. Award to be final, and not set aside for error in form. If claimant do not desire arbitration, or award be not made within three months, question shall be settled by a jury (or special jury if parties desire), to be summoned by the sheriff in manner prescribed. Parochial board to give ten days notice of such intention, stating the sum they are willing to give. Jurymen or witnesses, refusing to serve or give evidence, to forfeit £10. If claimant fail or be unable to appear, question to be determined by valuation in manner set forth. But, if absent claimant be dissatisfied with valuation, valuer may require an arbitration. Expenses of inquiry to be paid by the board unless the award do not exceed sum offered, or if claimant fail to appear, in either of which cases one-half of board's expenses to be paid by claimant. Expenses in case of difference to be settled by sheriff, who may enforce payment by warrant and sale. Under ss. 120—127, land not wanted may be sold with right of pre-emption to the owners of adjoining land in succession, if claimed within six weeks, any difference as to price to be settled by arbitration, such lands to be conveyed to purchaser by the board, and rates payable in the meantime to be made good. Penalties (ss. 130—141), recoverable in a summary manner before the sheriff or two justices recoverable by warrant and sale, not unlawful for want of form; when not otherwise provided for, one-half may be paid to informer and the other to the poor, to be sued for within six months; proceedings not to be quashed for want of form. Parties may, on giving ten days notice within four months, and providing sureties, appeal to quarter sessions, which shall make such order as thought reasonable.

18 & 19 VICT.
c. 68.

for their respective parish, subject to the provisions herein contained.

Liabilities
of old burial
grounds
transferred
to new
burial
grounds.

XVI. Where any burial ground shall be closed in terms of this act, and a new burial ground provided in place thereof, the whole burdens upon, and liabilities attaching to, the burial ground so closed, shall be transferred to, and become burdens upon, the burial ground provided in room thereof; and the revenues of the new burial ground shall be liable for the same, in like manner as the revenues of the burial ground so closed were liable.

Manage-
ment to be
vested in
parochial
boards.

XVII. The general management, regulation, and control of the burial grounds provided under this act shall, subject to the provisions of this act and the regulations to be made thereunder, be vested in and exercised by the respective parochial boards providing the same.

Boards may
sell exclu-
sive rights
of burial,
and right to
erect monu-
ments, &c.

XVIII. Any parochial board, under such restrictions and conditions as they think proper, may sell the exclusive right of burial, either in perpetuity or for a limited period, in such parts of any burial ground provided by such board as may with the sanction of the sheriff be appropriated to that purpose, and also the right of constructing any chapel, vault, or place of burial, with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground: Provided always, that such exclusive rights shall not extend in all to a space greater than one half of such burial ground.

Boards may
make ar-
rangement
for facili-
tating the
conveyance
of bodies to
burial
grounds.

XIX. Any parochial board may make such arrangements as they may from time to time think fit for facilitating the conveyance (a) of the bodies of the dead from the parish or the place of death to the burial ground which shall be provided under this act, or to any other place of burial, subject to the provisions of this act and the regulations to be made thereunder; and it shall be lawful for any of the aforesaid cemetery companies to undertake any such arrangement, and to carry the same into effect, subject to the provisions and regulations as aforesaid.

Places may
be provided
for reception
of bodies
until inter-
ment.

XX. It shall be lawful for any parochial board, subject to the provisions of this act and the regulations to be made thereunder, to hire, take on lease, or otherwise to provide fit and proper places in which bodies may be received and taken care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein, and for providing such places such boards may exercise the powers vested in them under this act for providing burial grounds.

Secretary of
state may
make regu-

XXI. It shall be lawful for one of her Majesty's principal secretaries of state, from time to time, to make such regulations in relation to the burial grounds and places of reception of

bodies previous to interment which may be provided under this act, as to him may seem proper for the protection of the public health and the maintenance of public decency; and the parochial boards and all other persons having the care of such burial grounds and places for the reception of bodies shall conform to and obey such regulations. 18 & 19 Vict. c. 68. lations as to burial grounds, &c.

XXII. No funeral procession, or carriage in such procession, and no foot passenger, shall, while going to or returning from the place of interment on the occasion of any interment, be liable in any toll or pontage. Exemption of burials from toll.

XXIII. It shall be lawful for any parochial board to enclose, lay out, and embellish any burial ground provided by such board in such manner as may be fitting and proper. Board may lay out and embellish burial ground.

XXIV. Every parochial board under this act shall, subject to the approval of the sheriff of the county, fix and receive such fees and payments in respect of interments in any burial ground provided by such board as they shall think fit, and from time to time revise and alter such fees and payments, and a table showing such fees and payments shall be printed and published, and shall be affixed and at all times continued on some conspicuous part of such burial ground. Board to fix payments for interments in burial ground.

XXV. The provisions of "The Cemeteries Clauses Act, 1847," (a) with respect to the protection of the cemetery, shall be incorporated with this act, and be applicable to any burial ground provided under this act, and "the Company" in these clauses shall signify the parochial board under this act. Certain provisions of 10 & 11 Vict. c. 65, incorporated with this act.

XXVI. The expenses incurred by the parochial board of any parish in carrying this act into execution, in so far as the sums received for exclusive right of burial or as fees or other payments in respect of interments shall be insufficient, shall be raised by assessment, to be levied in the same way as that which may be in force for the time being for the relief of the poor within the parish; and the parochial board shall have like powers for the levying of such assessments as parochial boards have for the levying of assessments for the relief of the poor. Expenses to be paid by assessments.

XXVII. Provided always, That it shall be lawful for the parochial board to borrow any money required for providing and laying out any burial ground under this act, and to charge the future assessments under this act with the payment of such money and interest thereon: Provided that there shall be paid in every year, in addition to the interest of the money borrowed and unpaid, not less than one twentieth of the principal sum borrowed, until the whole is discharged. Power to borrow money.

XXVIII. The commissioners for carrying into execution an act of the session of parliament holden in the fourteenth and fifteenth years of her Majesty, chapter twenty-three, "to authorise for a further Period the advance of money out of the Consolidated Fund to a limited Amount for carrying on Public The public works loan commissioners may advance money for the purposes of this act.

(a) See note, p. 89, and clauses at length, p. 127.

18 & 19 VICT.
c. 68.

Works and Fisheries and Employment of the Poor," and any act or acts amending or continuing the same, may from time to time make to the parochial board of any parish, for the purposes of this act, any loan, under the provisions of the recited act or the several acts therein recited or referred to, upon security of the assessments for the relief of the poor of the parish.

minutes of
proceedings
of board to
be entered
in a book.
Board to
keep ac-
counts,
which shall
be open to
inspection.

XXIX. Minutes of all proceedings of the parochial board under this act, with the names of the members who attend each meeting, shall be kept; and the parochial board shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money are paid and such liabilities incurred; and all such books shall at all reasonable times be open to the examination of every member of the parochial board and ratepayer, without fee, and they may take copies of or extracts from such books or any part thereof, without paying for the same.

Board may
appoint and
remove
officers, &c.

XXX. The parochial board may appoint and may remove, at pleasure, a clerk and such other officers and servants as shall be necessary for the business of the board in respect of and for the purposes of their burial ground, and may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire a sufficient office for transacting their business.

Register of
burials to be
kept in
every
ground pro-
vided under
this act.

XXXI. All burials within any burial ground provided under this act shall be registered in a register book to be provided by the parochial board providing such ground, and kept for that purpose; and such register book shall be so kept by some officer appointed by the said board to that duty; and in such register books shall be distinguished in what parts of the burial ground the several bodies (the burials of which are entered in such register books) are buried; and in case such burial ground has been provided for more than one parish, such register shall be kept or indexed so as to facilitate searches for entries in such books in respect of bodies from the several parishes; and such register books, or copies or extracts purporting to be thereof, shall be received in all courts as evidence of the burials entered therein.

Registers to
be evidence.

Sheriffs' de-
cisions to be
final.

XXXII. No interlocutor or deliverance of a sheriff under this act, excepting as herein provided, shall be in any way subject to review, or to be set aside by reason of any defect of form therein or in the procedure on which it followed.

20 & 21 VICT. C. 42.

An Act to amend "the Burial Ground (Scotland) Act, 1855." 20 & 21 VICT.
C. 42.
[17th August, 1857].

WHEREAS it is expedient to amend the act passed in the session of parliament holden in the eighteenth and nineteenth years of her Majesty, chapter sixty-eight, intituled "An Act to amend the Laws concerning the Burial of the Dead in Scotland:" be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled and by the authority of the same, as follows:—

I. The twenty-eighth section of the said act is hereby repealed. Section 28 of
recited act
repealed.

II. The commissioners for carrying into execution an act of the session of Parliament holden in the fourteenth and fifteenth years of her Majesty, chapter twenty-three, "to authorise for a further Period the advance of Money out of the Consolidated Fund, to a limited Amount, for carrying on Public Works and Fisheries and Employment of the Poor," and the several acts therein recited, mentioned, or referred to, and the act or acts subsequently passed for amending, continuing, or extending the same, may from time to time make to the parochial board of any parish for the purposes of the said Burial Ground (Scotland) Act, 1855, any loan under the provisions of the recited act, or the several acts therein recited or referred to, or subsequently passed for amending, continuing, or extending the same, upon security of the assessments authorised by the said Burial Grounds (Scotland) Act, 1855 (a). Commis-
sioners of
public
works may
make loans
to parochial
boards for
the purposes
of burial
ground
(Scotland)
acts.

(a) See note, p. 54.

IRELAND (a).



19 & 20 VICT. c. 98.

9 & 20 VICT. c. 98. *An Act to amend the Laws relating to the Burial of the Dead in Ireland.* [29th July, 1856.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :—

Short title. I. This act may be cited as "The Burial Grounds (Ireland) Act, 1856."

Interpreta-
tion of
terms.

II. In this act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say, "Lord Lieutenant" shall mean the Lord Lieutenant of Ireland or other chief governor or governors thereof; "Council" shall mean her Majesty's privy council in Ireland; "borough" shall mean any borough or town corporate in Ireland, or any town in which a board of municipal commissioners shall have been elected, under the provisions of an act of the third and fourth years of her present Majesty, chapter one hundred and eight, or in which town commissioners shall have been appointed, under the provisions of an act of the ninth year of King George the Fourth, chapter eighty-two, or an act of the seventeenth and eighteenth years of her present Majesty, chapter one hundred and three, or any act amending the same; "town council" shall mean the town council of the borough, or, where there is no town council, the board of municipal commissioners, or the town commissioners acting for the borough or town; "the borough fund" shall be held to include "the town fund;" "parish" shall extend to any extra-parochial precinct or place; "ratepayers" shall mean the persons for the time being assessed to and paying rates, or liable to be rated, under the provisions of this act; "town clerk" shall mean the town clerk of the borough, or where there is no town clerk, the clerk of the board of municipal commissioners, or of the town commissioners acting for the borough or town.

Burial
boards to

III. In the execution of this act in poor law unions, or any

(a) See observations, note, p. 190.

portion thereof not within the limits or boundaries of any borough as defined by this act, "burial board" shall be held to signify the board of guardians for the relief of the poor within any such poor law union or portion thereof, and the manner of holding and transacting business at meetings of such burial boards shall be similar to the manner in use in respect of the relief of the poor, and within the limits or boundaries of any borough "the town council of the borough" shall be held to be the "burial board" of such borough.

19 & 20 VICT.
c. 98.

carry this
act into
execution.

IV. The board of guardians for the relief of the poor shall, in carrying into execution the provisions of this act, be subject to the direction and control of the commissioners appointed for administering the law for the relief of the poor in Ireland.

Board of
guardians to
be subject to
poor law
commis-
sioners.

V. In case it shall appear to the Lord Lieutenant in council, upon representation duly made to him, that for the protection of the public health the opening of any new burial ground in any city or town or within any other limits in Ireland, save with the approval of the Lord Lieutenant, should be prohibited, or that burials in any city or town or within any other limits, or in any burial grounds or places of burial, should be wholly discontinued, or should be discontinued subject to any exception or qualification, it shall be lawful for the Lord Lieutenant, by and with the advice of her Majesty's privy council in Ireland, to order that no new burial ground shall be opened in any city or town or within such limits without such previous approval, or (as the case may require) that after a time mentioned in the order burials in such city or town or within such limits, or in such burial grounds or places of burial, shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such orders, and so from time to time as circumstances may require: Provided always, that notice of such representation, and of the time when it shall please the Lord Lieutenant to order the same to be taken into consideration by the privy council, shall be published in the Dublin Gazette, and shall be affixed on the doors of the churches or chapels of or on some other conspicuous places within the parishes affected by such representation, one month before such representation is so considered.

On repre-
sentation
duly made
to him,
Lord Lie-
utenant in
council may
restrain the
opening of
new burial
grounds,
and order
discontinu-
ance of
burials in
specified
places.

VI. It shall be lawful for the Lord Lieutenant, by and with the advice of the privy council, to postpone the time appointed by any order in council for the discontinuance of burials, or otherwise to vary any order in council made under this act, (whether the time thereby appointed for the discontinuance of burials thereunder or other operation of such order shall or shall not have arrived,) as to the Lord Lieutenant in council shall seem fit; and every order of the Lord Lieutenant in council made for varying any order previously made under this act shall be deemed valid and effectual in law.

Lord Lie-
utenant in
council may
postpone
order for
discontinu-
ance of
burials, &c.

VII. Any such order in council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers,

Order not
to extend

19 & 20 VICT.
c. 98.

to burial
grounds of
Quakers,
unless ex-
pressly
included.

Order not
to extend
to burial
grounds of
French
Protestants,
unless ex-
pressly
included.

Penalty on
persons
burying
contrary
to the pro-
visions of
orders in
council.

Saving of
certain
rights to
bury in
vaults.

New burial
grounds not

used solely for the burial of the bodies of such people, unless the same shall be expressly mentioned in such order; and nothing in this act shall prevent the burial in any such burial ground in which for the time being interment is not required to be discontinued of the bodies of such people.

VIII. Provided, That no such order in council as aforesaid shall be deemed to extend to the burial grounds or cemeteries situate respectively in Merriun Row and Peter Street in the city of Dublin, the property of the French Protestants, and used solely for the burial of the bodies of the descendants of the French Protestant refugees, unless the same be expressly mentioned in such order; and nothing in this act shall prevent the burial as heretofore in such burial grounds or cemeteries respectively, so situate in Merrion Row and Peter Street aforesaid, of the bodies of such descendants of French Protestant refugees.

IX. If any person, after the time mentioned in any order in council under this act for the discontinuance of burials, shall knowingly and wilfully bury any body, or in anywise act or assist in the burial of any body, in or under any church, chapel, churchyard, burial ground, or place of burial, or elsewhere, as the case may be, within the limits in which burials have by such order been ordered to be discontinued, in violation of the provisions of any such order, every person so offending shall, upon summary conviction thereof, forfeit a sum not exceeding ten pounds.

X. Provided always, That, notwithstanding any such order in council, where, by virtue of any faculty legally granted, or by usage or otherwise, there is at the time of the passing of this act any usage or right of interment in or under any church or chapel affected by such order, or in any vault of any such church or chapel, or of any churchyard or burial ground affected by such order, and where any exclusive right of interment in any such burial ground has been purchased or acquired before the passing of this act, it shall be lawful for the Lord Lieutenant, from time to time, on application being made to him, and on being satisfied that the exercise of such right shall not be injurious to health, to grant a licence (a) for the exercise of such right, during such time and subject to such conditions and restrictions as the Lord Lieutenant may think fit; but such licence shall not prejudice or in anywise affect the authority of the ordinary, or of any other person who if this act had not been passed might have prohibited or controlled interment under such right, nor dispense with any consent which would have been required under such right, nor otherwise give to such right any greater force or effect than the same would have had if this act had not been passed.

XI. Where by any such order in council it is ordered that no

(a) See note p. 27.

new burial ground shall be opened in any city or town or within 19 & 20 VICT.
any limits in such order mentioned, without the previous c. 98.
approval of the Lord Lieutenant, no new burial ground or ceme-
tery (parochial or non-parochial) shall be provided and used in
such city or town or within such limits without such previous
approval. to be opened
contrary to
order in
council.

XII. Where by usage or otherwise any grave, vault, or place No corpse
of interment in any burial ground or cemetery has been the to be buried
burying place of and used as such by any family, no corpse of in private
any person not having been a member of such family shall be grave with-
buried in such grave, vault, or place of interment without the out consent.
consent in writing of some immediate relative of the member of
such family last interred therein ; and if any person shall know-
ingly act or assist in any burial contrary to the provisions of
this clause, every such person shall be liable, on summary con-
viction before any two justices of the peace at petty sessions, to
a penalty not exceeding ten pounds ; and upon any complaint
made under this clause it shall be lawful for the justices at
petty sessions to make such order for the exhumation and re-
interment of such corpse so hurried as to such justices shall
seem fit.

XIII. No animal of any description shall be allowed to graze No animal
or to be within the limits of any burial ground having a suf- to be allowed
ficient fence ; and it shall be lawful to any two justices of the to graze in
peace at petty sessions to order the owners of any animal or burial
animals so found within such burial ground to pay as a fine a places.
sum not exceeding two shillings and not less than one shilling
for each animal so found as aforesaid, and to levy and dispose
of said fine in the same manner as fines for trespass of cattle
are now levied and disposed of under the provisions of the law
at present in force in Ireland.

XIV. Although no burial ground has been closed by order in Upon re-
council, the clerk of the union in which any city, town, or place quisition of
is situate, not being within the limits of a borough, and the ratepayers
town clerk of any borough, shall, upon the requisition in writing or members
of ten or more persons assessed for the relief of the poor in such of burial
city, town, or place, or liable to the payment of borough rate in board,
such borough respectively, or upon the requisition in writing of meeting of
any two or more members of the burial board of such union or board to be
borough respectively, convene a special meeting of the burial convened to
board of such union or borough, for determining whether burial determine
ground shall be provided under this act for such city, whether burial
town, or place, or for such borough respectively ; and if ground shall
a majority of such meeting shall resolve that a burial ground be provided.
shall be provided under this act for such city, town, or place,
or borough respectively, such new burial ground shall be pro-
vided, in the same manner as if an old burial ground had been
closed by order in council.

XV. Whenever any burial ground shall have been closed in When burial
any city, town, or place, or in any borough respectively, by grounds are

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closed by
order in
council,
board to
provide
suitable
burial
grounds, &c.
Consent of
owners of
houses to
new burial
grounds,
where neces-
sary.

Board may
purchase
land for
cemeteries,
or contract
with ceme-
tery com-
panies.

Certain pro-
visions of 8
& 9 Vict. c.
18, incorpo-
rated with
this act.

order in council, the burial board may, if it shall seem necessary or expedient, forthwith proceed to provide a suitable and convenient burial ground for such city, town, or place, or borough respectively, and to make arrangements for facilitating interments therein, under the provisions of this act.

XVI. Any burial ground may be provided under this act, either within or without the limits of the city or town or borough for which the same is provided, and in case any burial ground to be so provided for any city, town, or borough shall be situate without the limits of such city, town, or borough, the same shall, for the purposes of this act, be considered as if the same was within such limits; but no ground not already used as or appropriated for a cemetery shall be appropriated as a burial ground, or as an addition to a burial ground, under this act, nearer than one hundred yards to any dwelling house, without the consent in writing of the owner, lessee, and occupier of such dwelling house.

XVII. For the providing such burial ground, it shall be lawful for the burial board to contract for and purchase or take any lands, and buildings thereon, for the purpose of forming a burial ground, or for making additions to any burial ground to be formed or purchased under this act, as such board may think fit, or to purchase from any company or persons entitled thereto any cemetery or cemeteries or part or parts thereof, subject to the rights in vaults and graves and other subsisting rights which may have been previously granted therein: Provided always, that it shall be lawful for such board, in lieu of providing any such burial ground, to contract with any such company or persons entitled as aforesaid for the interment in such cemetery or cemeteries, and either in any allotted part of such cemetery or cemeteries or otherwise, and upon such terms as the burial board may think fit, of the bodies of persons who would have had rights of interment in the burial grounds of such parish or place.

XVIII. The Lands Clauses Consolidation Act, 1845, except the provisions of that act "with respect to the provisions to be made for affording access to the special act by all parties interested," and "with respect to the purchase and taking of lands otherwise than by agreement," shall be incorporated with this act (a); and for the purposes of this act the expression "the promoters of the undertaking," wherever used in the said act, shall mean any burial board under this act: Provided always, that the provisions in the said act "with respect to

(a) For the chief portion of the act here incorporated see clauses at length, p. 102. With respect to lands not required, and recovery of penalties (ss. 127—49), see summary of corresponding sections of 8 & 9 Vict. c. 19, p. 194, note.—Witnesses may be summoned by justices on any matter, and on refusal to appear or give evidence, shall forfeit 5*l.* for every such offence, or giving false evidence, liable to penalties of perjury.

lands acquired by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, but which shall not be required for the purposes thereof," shall be held to apply only to such lands in which no burial shall have taken place, and such provisions shall not be restricted in operation to any fixed period after the purchase of such lands.

19 & 20 Vict.
c. 98.

XIX. Where any burial ground shall be closed under the provisions of this act, and a new burial ground provided in place thereof, the whole burthen upon and liabilities attaching to the burial ground so closed shall be transferred to and become burthens upon the burial ground provided in place thereof, and the revenues of the new burial ground shall be liable for the same in like manner as the revenues of the burial ground so closed were liable.

Liabilities of
old burial
grounds
transferred
to new
burial
grounds.

XX. The general management, regulation, and control of the burial grounds provided under this act shall, subject to the provisions of this act and the regulations to be made thereunder, be vested in and exercised by the respective burial boards providing the same: Provided always, that any question which shall arise touching the fitness of any monumental inscription placed or proposed to be placed in any part or portion of such grounds shall be determined by the proper ministers of the religious denomination to which such part or portion shall have been allotted: Provided also, that at the burials of the bodies of members of the United Church of England and Ireland, or of the Roman Catholic Church, or of any other religious denomination, burial service according to the respective rites of such church or denomination may be performed or celebrated by the proper ministers of such church or denomination.

Manage-
ment to be
vested in
burial
boards.

XXI. Any burial board, under such restrictions and conditions as they think proper, may sell the exclusive right of burial, either in perpetuity or for a limited period, in such parts of any burial ground provided by such board as may be appropriated to that purpose, and also the right of constructing any chapel, vault, or place of burial, with the exclusive right of burial therein, in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground, subject to the provisions hereinbefore contained: Provided always, that such exclusive rights shall not extend in all to a space of one half of such burial ground.

Boards may
sell exclu-
sive rights
of burial
and rights
to erect
monuments,
&c.

XXII. Any burial board may make such arrangements as they may from time to time think fit for regulating and facilitating the conveyance of the bodies (a) of the dead from the place of death to any burial ground which shall be provided under this act, subject to the provisions of this act and the regulations to be made thereunder; and it shall be lawful for

Boards may
make ar-
rangements
for facilita-
ting the
conveyance
of bodies to
burial
grounds.

(a) See note, p. 90.

19 & 20 VICT.
c. 98.

any of the aforesaid cemetery companies from whom the burial board shall have made any such purchase, or with whom the burial board shall have made any such contract as hereinbefore provided, to undertake any such arrangement, and to carry the same into effect, subject to the provisions and regulations aforesaid.

Places may
be provided
for reception
of bodies
until inter-
ment.

XXIII. It shall be lawful for any burial board, subject to the provisions of this act and the regulations to be made thereunder, to hire, take, or lease, or otherwise to provide, fit and proper places in which bodies may be received and taken care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein; and for providing such places such boards may exercise all the powers vested in them under this act for providing burial grounds.

Lord Lieu-
tenant in
council may
make regu-
lations as to
burial
grounds, &c.

XXIV. It shall be lawful for the Lord Lieutenant in council from time to time to make such rules and regulations in relation to the burial grounds and places of reception of bodies previous to interment which may be provided under this act as may seem proper for the protection of the public health and the maintenance of public decency, and for the proper registry of interments, and to provide for the imposition and recovery of penalties not exceeding ten pounds for each offence for the breach or non-observance of such regulations; and the burial boards, and all other persons having the care of such burial grounds and places for the reception of bodies, shall conform to and obey such regulations.

Exemption
of burials
from toll.

XXV. No funeral procession, or carriage in such procession, and no foot passenger, shall, while going to or returning from the place of interment on the occasion of any interment, be liable to any toll or pontage.

Board may
lay out and
embellish
burial
ground.

XXVI. It shall be lawful for any burial board to enclose, lay out, and embellish any burial ground provided by such board, in such manner as may be fitting or proper: Provided always, that in all cases in which a burial board shall provide a new burial ground under this act, it shall be lawful for such burial board, with the sanction of the Lord Lieutenant, to divide such new burial ground or some part thereof into certain parts and proportions, to be allotted in such manner as to the Lord Lieutenant shall seem fit, for the burial of the members of any particular religious denomination; and each such allotment shall, as the case may require, be consecrated according to the rites and by the proper ministers of the respective religious denominations for which each such allotment is so set apart.

Board to fix
payments
for inter-
ments in
burial
grounds.

XXVII. Every burial board under this act shall, subject to the approval of the Lord Lieutenant, fix and receive such fees and payments in respect of interments in any burial ground provided by such board as they shall think fit, and from time to time revise and alter such fees and payments; and a table showing such fees and payments shall be printed and published,

and shall be affixed and at all times continued on some conspicuous part of such burial ground. 19 & 20 Vict. c. 98.

XXVIII. Minutes of all proceedings of the burial board under this act, with the names of the members who attend each meeting, shall be kept; and the burial board shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this act, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money are paid and such liabilities incurred; and all such books shall at all reasonable times be open to the examination of every member of the burial board and ratepayer, without fee, and they may take copies of or extracts from such books or any part thereof, without paying for the same.

Minutes of proceedings of board to be entered in a book.

Board to keep accounts, which shall be open to inspection.

XXIX. The burial board may appoint and may remove at pleasure a clerk and such other officers and servants as shall be necessary for the business of the board in respect of or for the purposes of their burial ground, and may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire a sufficient office for transacting the business of such burial board; and the provisions and clauses of "The Commissioners Clauses Act, 1847," with respect to the "appointment and accountability of the officers of the commissioners" (a), shall, so far as the same are not varied by or inconsistent with the provisions of this act, be incorporated therewith; and the commissioners in the said act shall signify the "burial board" under this act.

Board may appoint and remove officers, &c.

XXX. All burials within any burial ground provided under this act shall be registered in a register book to be provided by the burial board providing such ground, and kept for that purpose; and such register book shall be so kept by some officer appointed by the said board to do that duty; and in such register book shall be distinguished in what parts of the burial ground the several bodies (the burials of which are entered in

Register of burials to be kept in every ground provided under this act.

(a) Under "The Commissioners Clauses Act," the offices of clerk and treasurer may not be held by the same person or by partners under penalty of £100 and costs, recoverable by action of debt (s. 66); any officer accepting fees other than those allowed, or who shall be interested in any contract made by the burial board, shall lose his office, and forfeit £50, recoverable in like manner (67); any person intrusted with money to give security (68); collector shall pay any monies to the treasurer within seven days of receipt, shall deliver true accounts and lists of monies due and unpaid (69); also account of payments and vouchers, and pay balances to proper officers (70); on failure to account or deliver up papers within five days after being so required, such officer may be summoned before two justices, or sheriff, who may adjust balance in a summary way, and order payment of same to be levied by distress, and in default offender may be committed without bail, for any period not exceeding three months (71); officer refusing to account when so summoned, or to produce papers, may be committed until same be delivered up (72); if intending to abscond, warrant may issue (73); but no such proceeding to discharge sureties (74).

19 & 20 Vict.
c. 98.

Public
works loan
commission-
ers may
advance
money for
the purposes
of this act.

Expenses of
act to be
defrayed by
a separate
rate.

such register book) are buried; and such register book, or copies or extracts thereof, or purporting to be copies or extracts thereof, shall be received in all courts as evidence of the burials entered therein.

XXXI. The commissioners for carrying into execution an act of the fourteenth and fifteenth years of Her present Majesty, chapter twenty-three, intituled "An Act to authorise for a further Period the Advance of Money out of the Consolidated Fund to a limited Amount, for carrying on Public Works and Fisheries and Employment of the Poor," and any act or acts amending the same, may from time to time, if they shall so think fit, make to the burial board of any borough or place for the purposes of this act any loan, under the provisions of the recited act or the several acts therein recited or referred to, upon security of the assessments for the relief of the poor of the union, or the borough fund, or rates in this act mentioned (a).

XXXII. For the purpose of defraying the expenses incurred in the execution of this act, or paying any money borrowed for such purpose, or any interest thereon, the guardians of every union who shall be appointed the burial board of such union or any part thereof, under the provisions of this act, shall from time to time make and levy such rates as may be necessary on every occupier of rateable hereditaments in or arising within such union or any part thereof, not being within the boundaries or limits of any borough as defined by this act; and all rates so made under this act by the guardians of such union shall be apportioned, assessed, and levied on such union, or on such electoral division situate in such union, and wholly or partly on the parishes for which any new burial ground shall have been provided under this act, as the poor law commissioners for Ireland shall by any order in that behalf direct, and shall be apportioned, assessed, and levied as if the sums so payable were sums to be apportioned, assessed, and levied for the purpose of carrying into execution the laws for the relief of the destitute poor in Ireland; and all monies borrowed by the guardians of such unions for the purposes of this act, or any interest thereon, shall be secured upon the rates authorised to be made by the guardians of such union by this act; and any money required to be raised in any borough or town in which a board of municipal commissioners shall have been elected, as heretofore mentioned, for defraying such expense, or paying any money borrowed under this act by the council of such borough, or the municipal commissioners or town commissioners of such town, or any interest thereon, by means of a rate levied in such borough or town, shall be raised by a separate rate to be levied within such borough or town; and the council of such borough and the municipal commissioners of such town shall have all such powers for making and levying such rate respectively, and all provisions shall be appli-

cable in respect thereof, as in the case of any borough rate or improvement rate authorised to be made therein under the provisions of the respective acts of parliament under which the council of such borough or the municipal commissioners of such town are constituted: Provided always, that such rates shall be levied wholly or partly in the parishes within such borough or town for which any new burial ground shall have been provided under this act, as the Lord Lieutenant in council shall by any order in that behalf direct; and provided also, that when the amount of the rates to be assessed by the council of such borough or the municipal commissioners or town commissioners of such town are limited by law to a certain rateable amount, such limitation shall not apply or extend to expenses incurred for carrying this act into execution; and it shall be lawful for the council of such borough or the municipal commissioners or town commissioners of such town to charge the expenses under this act in addition to the other borough or town rates respectively; and all monies borrowed by the said council or the said commissioners under this act, or any interest thereon, shall be charged upon the rates authorised to be levied by the said council or commissioners respectively by this act.

XXXIII. It shall be lawful for the guardians of any union or the council of any borough to appropriate for the purposes of this act any land belonging to the board of guardians of such union or to the body corporate of such borough respectively, or vested in any feoffees, trustees, or others for the general benefit of the union or borough respectively, or any specific charity: Provided always, that when any land so appropriated shall be subject to any charitable use such land shall be taken on such conditions only as the Court of Chancery, in the exercise of its jurisdiction over charitable trusts, shall appoint and direct.

XXXIV. Whereas the grand juries of the county and city of Waterford, acting under the act of the fortieth year of King George the Third, chapter ninety-three, purchased a piece of ground situate in the townland of Ballynasheagh in the barony of Gaultier, in the county of Waterford, for the purpose of a cemetery, in lieu of the ancient burial places of the six several parishes of Trinity Within, Saint Michael, Saint Stephen Within, Saint Olave, St. John Within, and St. Patrick, in the borough of Waterford, and of the three parishes of Trinity Without, Saint John Without, and St. Stephen Without, partly in the borough and partly in the county of Waterford, and of the two parishes of Kilbarry and Kil Saint Laurence in the county of Waterford: And whereas the said eleven parishes are all situate within the poor law union of Waterford, and it is advisable that the said piece of ground should be used as a burial ground for all the said parishes as if all the said parishes were situate within the limits of the said borough of Waterford, and as if the said piece of ground had been provided as the burial ground under this act for the said several parishes: Be it enacted, that

19 & 20 Vict.
c. 98.

Guardians
or council
may appropriate lands
for purposes
of act.

Burial
ground
already provided by the
county and
city of
Waterford
to vest in
poor law
guardians of
Waterford
union.

19 & 20 VICT.
c. 98.

from and after the passing of this act the said piece of ground shall, without further conveyance, be vested in the guardians of the poor of the Waterford Union as the burial board, and for the use of all the district at present comprised in the said eleven parishes, subject to all the powers and regulations in this act contained relative to burial grounds, and as if the same had been purchased and acquired under this act; and unless the said piece of ground shall be discontinued as a burial ground by the Lord Lieutenant and council under the provisions of the fifth section of this act, all the said parishes and portions of parishes situate in the borough of Waterford shall, for the purposes of this act, be considered as if the same were without the limits of the said borough of Waterford.

Certain provisions of 10 & 11 Vict. c. 65, incorporated with this act.

XXXV. The provisions of "The Cemeteries Clauses Act, 1847" (a), with respect to the protection of the cemetery, shall be incorporated with this act, and be applicable to any burial ground provided under this act; and the words "The Company" in "The Cemeteries Clauses Act, 1847," shall signify the "Burial Board" under this act: Provided always, that every penalty imposed under and by virtue of this act shall be enforced, recovered, and appropriated under the provisions of the "Petty Sessions (Ireland) Act, 1851," except when the act or offence in respect of which such penalty shall have been incurred shall have been committed within the jurisdiction of the justices of the police district of Dublin metropolis, in which case such penalty shall be enforced and recovered under the provisions of the acts relating to such police districts.

Burial boards may borrow money for laying out burial ground, &c., and charge same on rates to be levied under this act.

XXXVI. Every burial board under this act may, with the consent of the Lord Lieutenant, borrow any sum of money not exceeding such sum as the Lord Lieutenant may sanction and appoint, required for providing, laying out, and embellishing any burial ground under this Act, or any such purposes, and may charge the future assessments or rates respectively under this act with the payment of such money, and interest thereon not exceeding six per cent.; provided that there shall be paid in every year, in addition to the interest of the money borrowed and unpaid, not less than one twentieth of the principal sum borrowed, until the whole is discharged.

Money may be borrowed to pay off securities.

XXXVII. Any burial board acting under this act may, if they think fit, borrow money in order to pay off and discharge any security or securities, and secure the repayment of the money so borrowed, and the interest to be paid thereon, in like manner as other monies authorised to be borrowed by such burial board under this act.

Assessment to local rates not to be increased after pur-

XXXVIII. No land already or hereafter to be purchased or acquired under the provisions of this act, for the purpose of a burial ground (with or without any building erected or to be erected thereon), shall, while used for such purposes, be

(a) See note, p. 89, and clauses, p. 127.

assessed to any county, parochial, or other local rates at a higher value or more improved rent than the value or rent at which the same was assessed at the time of such purchase or acquisition.

19 & 20 Vict.
c. 98.

XXXIX. It shall be lawful for any burial board, with the sanction of the Lord Lieutenant, and subject to regulations approved of by him, to let any land purchased by and vested in them under this act, and which has not been consecrated, and in which no body has been at any time interred, and which is not for the time being required for the purposes of a burial ground, in such manner and on such terms as such board may see fit, but, so, nevertheless, that power shall be reserved to such board to resume any such land which may be required for the purposes aforesaid, upon given six months' notice.

chase for
the purposes
of this or
any former
act

Burial board
may let land
not required
for burials.

XL. In every case in which any order in council has been or shall hereafter be issued for the discontinuance of burials in any churchyard or burial ground, the burial board shall maintain such churchyard or burial ground in decent order, and also do the necessary repair of the walls and other fences thereof; and the costs and expenses shall be repaid out of the rates by this act authorised, unless there shall be some other fund legally chargeable with costs and expenses.

Burial board
to keep in
order closed
burial
grounds, &c.

XLI. And whereas the mayor, aldermen, and burgesses of the borough of Limerick have, with the consent and approbation of the Commissioners of Her Majesty's Treasury, executed a lease of a certain plot of ground situate at Gortuemanagh in the barony of Clanwillians and county of Limerick (which plot of ground is part of the property of the said corporation of Limerick, but is not situate within the limits or boundaries of the borough of Limerick), unto certain parties for the term of two thousand years, at a certain yearly rent, for the purpose of the same being used as a cemetery or burial ground: Be it further enacted, that for the purposes of this act the said plot of ground shall be deemed and taken to be within the limits or boundaries of the said borough of Limerick.

Certain plot
of ground to
be deemed
to be within
the limits
of the
borough of
Limerick.

XLII. The provisions of this act shall not apply to any private and exclusive family mausoleum or burial place not being within the limits of any public burial ground.

Not to apply
to private
mauso-
leums.

XLIII. This act shall extend to Ireland only.

Extent of
act.

23 & 24 VICT. c. 76.

An Act to amend the Burial Grounds (Ireland) Act, (1856). [6th August, 1860.]

23 & 24 VICT.
c. 76.

WHEREAS it is expedient to amend "The Burial Grounds (Ireland) Act, 1856:" Be it enacted by the Queen's most

19 & 20 Vict.
c. 98.

23 & 24 VICT.
c. 76.

excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows :

Provisions
of recited
act to be ex-
tended to
additions to
existing
burial
grounds.

I. The provisions contained in the said act shall extend to authorise any burial board to contract for and purchase or take a lease of any lands, and buildings thereon, for the purpose of making additions to any burial ground, although such burial ground shall not have been formed or purchased under the said act, provided that such burial ground is not attached or contiguous to any church or chapel or place of worship actually used for divine worship, or situated in any private demesne ; and such burial board shall have and exercise, with respect to the acquisition and management of such additions, all the powers and authorities and be subject to all the provisions contained in the said act with respect to the acquisition and management of new burial grounds, in the same manner as if the acquisition of such additions had been authorised by the said act : Provided that when any lease is taken of any such additional land or building the term of such lease shall not be less than nine hundred years.

When burial
ground not
fenced or
kept in
decent order
by owner,
burial board
may serve
notice on
owner, re-
quiring
same to be
fenced or
kept in de-
cent order.

II. When any burial ground not being attached or contiguous to any such church, chapel, or place of worship, or situate in any private demesne, as aforesaid, is without any sufficient fence, or is not kept in decent order, the burial board for the union, borough, or town within which such burial ground shall be situated may, by notice in writing to the owner of such burial ground, require him properly to fence the same or put the same in decent order within a time to be specified in such notice, not being less than six calendar months ; and if such notice be not complied with within the time specified in such notice, the said burial board may securely fence such burial ground, and put the same into decent order, and the expense thereof shall be deemed part of the expenses incurred in the execution of the said act.

After six
months
from service
of notice,
&c., burial
board em-
powered to
fence burial
ground, and
keep same
in order.

III. When such owner cannot be ascertained, or notice as aforesaid cannot be served, such burial board may give notice by public advertisement in some newspaper circulating in the county wherein such burial ground is situated, of their intention to fence such burial ground, or put the same in decent order, as the case may be, and after the expiration of a time to be specified in such notice, not being less than six calendar months, may proceed to fence such burial ground, or put the same in decent order ; and when such notice shall have been given or advertisement published, and the expense of fencing of such burial ground or putting the same in decent order shall have been defrayed by such burial board, as hereinbefore mentioned, such burial ground shall be under the control and management of such burial board, and they shall be deemed the owners thereof until such time as they shall have been reimbursed by the

owner thereof the expense so incurred by them, with interest thereon at the rate of five pounds per centum per annum. 23 & 24 VICT. c. 76.

IV. When the owner of any burial ground, whether situate in a private demesne or elsewhere, shall be desirous of putting the same under the management of the burial board of the district, it shall be lawful for such burial board to accept the management thereof, and thereupon the said burial board shall be deemed the owners thereof, and shall have and exercise all the powers and authorities of the said recited act and of this act, with respect to the same, until the owner, his heirs or assigns, shall repay to the said burial board all expenses incurred by them in securely fencing such burial ground or putting the same into decent order, with interest thereon at the rate of five pounds per centum per annum.

Burial boards may accept the management of burial grounds in private demesnes or elsewhere.

V. This act shall be deemed to be incorporated with "The Burial Grounds (Ireland) Act, 1856," and shall be as if this act and the said act were one act. Acts to be construed as one act.

31 & 32 VICT. C. 103.

An Act to amend the Law which regulates the Burials of Persons in Ireland not belonging to the Established Church. [31st July, 1868.] 31 & 32 VICT. c. 103.

WHEREAS it is expedient to amend the law of burial in Ireland :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. That whenever after the passing of this act any person who at the time of his or her death shall not have been a member of and in communion with the United Church of England and Ireland shall be buried, as of right, within any churchyard or graveyard, the soil or freehold whereof shall be vested in any rector, vicar, or other incumbent, it shall be lawful for the priest or minister of the religious denomination to which such person shall have belonged at the time of his or her death, and he is hereby empowered, to attend such burial, and to read such prayers or perform such burial service at the grave in such churchyard or graveyard as is usual and customary at burials of persons belonging to such religious denomination ; and any person wilfully obstructing such prayers or burial service shall be deemed guilty of a misdemeanor : Provided always, that such prayers shall not be read nor such burial service performed either wholly or in part during the time of the celebration of divine service or any rite or ceremony of the said United Church, or during the catechising or other instruction of children or young persons in the church or

Where burials of persons not belonging to United Church of England and Ireland take place in burial grounds of such Church, priest, &c., of other denomination may perform service.

31 & 32 VICT.
c. 103.

Prohibition
of interfer-
ence with
burial.

Notice to
be given of
the time at
which it is
proposed
that the
burial shall
take place.

Lord Lieu-
tenant in
council to
have power
to exempt
certain
church-
yards.

Extent of
act

chapel to which such churchyard or graveyard belongs, nor within half an hour before the commencement or after the conclusion of any such celebration, catechising, or instruction, nor during the time at which the incumbent or minister of such church or chapel, or any other minister or other ecclesiastical person, shall be performing the burial service in such churchyard or graveyard, nor during the performance of any other burial service therein: Provided always, that nothing in this act shall confer any right of burial where no such right already exists, or shall affect the rights or privileges of any ordinary, rector, vicar, or other incumbent.

2. Nothing herein contained shall authorize or justify any interference with or interruption of the celebration of divine service in the church or chapel to which such churchyard or graveyard may be attached or belong, or the obstruction of persons going thereto or returning therefrom.

3. Such priest or minister who may purpose to attend such burial shall, twenty-four hours before the reading of such prayers or the performance of such burial service, serve or cause to be served upon the person appointed by the rector, vicar, or other incumbent of the parish to receive such notices a notice in writing, signed with his name, stating the name and late residence of the person about to be buried, and the hour at which he purposes to read such prayers or perform such burial service; and if there be no celebration, catechising, or instruction already appointed to take place, or other burial service appointed to be performed at the time specified in the notice, of which he is to be then and there informed, he shall read such prayers or perform such service at the time for which he has given notice; but if any celebration, catechising, instruction, or other burial service shall have been already appointed, then he shall appoint some other convenient time before or after such celebration, catechising, instruction, or other burial service.

4. And whereas many parish churches have of late years been erected on a new site, having attached to them small churchyards given or purchased for the sole use of persons attending the worship of the church, and in size proportioned to the wants of the congregation, leaving the old churchyard for the general use of the parishioners: And whereas many perpetual cures and district parishes have been erected of late years, and churches built in them, with small graveyards intended solely for the use of the congregations of such churches: Be it therefore enacted, That it shall be lawful for the Lord Lieutenant in council, on application from the incumbents of any such church, to declare the same to be exempt, and which exemption shall be published in the "Dublin Gazette," and thereupon such churchyards shall be exempted from the operation of this act.

5. This act shall extend to Ireland only.

CASES.

REG. v. MANCHESTER (JUSTICES).

ST. GEORGE'S CHURCH, Hulme, in Manchester, with a churchyard adjoining, was established and provided under the Church Building Acts, and under stat. 13 & 14 Vict. c. 41, it was constituted a parish and rectory. By an order in Council, under the 16 & 17 Vict. c. 134, it was ordered *inter alia*, that after 1st June, 1855, no more than one body should be buried in any grave in St. George's Churchyard, Hulme, in Manchester. The rector disputed the validity of this order, and assisted at the burial of two bodies in one grave after the time specified. An information was laid before two justices; the rector admitted the facts and denied their jurisdiction, and the justices refused to act.

REG. v.
MAN-
CHESTER.

Church-
yards estab-
lished by
act of par-
liament, not
excepted
from the
operation of
the burial
acts.

The rector maintained that, as his rectory is not an ancient parish with a churchyard established at common law, the churchyard there is within the letter of the exception in sect. 5 of the 16 & 17 Vict. c. 134.

Lord Campbell, C. J. — The question very properly submitted to us in this case, turns upon the validity of the Order in Council, dated 21st May, 1855; and this depends entirely upon whether this churchyard comes within the exception contained in the statute as being "a cemetery established under the authority of any Act of Parliament." In one sense, the churchyard was established under the authority of an Act of Parliament. But we do not think that this construction is to be put upon the words as used in the exceptive clause. We attach little weight to the argument that the words "cemetery" only is to be found in the exception relied upon, without the words "burial ground" being added, as the word "cemetery" both in its original meaning and as commonly used, is quite sufficient to comprehend all Christian burial grounds. Looking, however, to the object of the legislature and the enactments of the statute 15 and 16 Vict. c. 85, a statute *in pari materia*, we do not think that, when the laws concerning the burial of the dead which had been enacted for the Metropolis were to be extended to the rest of England, there was any intention to prevent the Queen in Council and the Secretary of State from making orders respecting the cemeteries attached to district churches beyond the limits of the Metropolis.

REG. V.
MAN-
CHESTER.

Sect. 7 of statute 15 & 16 Vict. c. 85, excepts from the provisions of that act cemeteries mentioned in the Schedule (B). This schedule does not contain any of the Church Building Acts, and is confined to acts for establishing cemeteries within the Metropolitan District by cemetery companies (during the argument appropriately designated "commercial cemeteries"), leaving all burying grounds attached to district churches established under the Church Building Acts within the extensive area of the Metropolis, comprehending large portions of the counties of Middlesex, Surrey, and Kent, subject to the Orders of the Queen in Council and the Secretary of State, to be made with a view to the public health.

No reason can be assigned why the Queen in council and the Secretary of State should not have the same power over a district churchyard at Manchester, as over a district churchyard at Bethnal Green (*a*). In truth, these churchyards in parochial districts, established under the Church Building Acts (with respect to the purposes and policy of the Interment Acts) are not to be distinguished from churchyards belonging to parishes which have existed from time immemorial. We therefore think, that a more limited construction ought to be put upon the words "any cemetery established under the authority of any Act of Parliament" than was contended for in the argument. The exception seems to contemplate only cemeteries established by authority of a special act, such as those enumerated in Schedule (B) to statute 15 & 16 Vict. c. 85, as Kensal Green, and other "commercial cemeteries." Consequently the order is valid; the magistrates had jurisdiction to hear the information which charges an infraction of it; and the mandamus prayed for must issue."—*Rule accordingly.*

5 Ell. & Bl., 702; 2 Jur., N.S. 182; 25 L. J.,
M.C. 45.

MORELAND

v.

RICHARD-
SON.

MORELAND v. RICHARDSON.

Rights of
purchasers
of family
graves will
be pro-
tected.

Persons had purchased for a valuable consideration, more than twenty years ago, family graves in perpetuity in a private burying ground, which was afterwards closed by order of the Queen in Council. There was no formal grant executed, but their right was evidenced by a receipt for the purchase money stating the purchase. This right the defendants, who are the deacons, and some of the managing members of the congregation, had so far interfered with since the Order in Council closing the graveyard, as to remove the tombstones from the heads of the graves, and lay them with their faces downwards so as to form a very neat pavement all round the chapel. The plaintiffs pro-

(a) See *Hornby v. Toxteth Park* (p. 227) [A. N.].

testing against such an act of desecration as far as their ancestors were concerned, and of exclusion as far as their own personal remains might subsequently be affected, moved for an injunction to prevent the deacons from so interfering with them in the enjoyments of their rights.

Sir J. Romilly, M.R., held that they were entitled to an injunction to restrain the trustees from removing or injuring the graves or gravestones or from interfering with the interment of any of the plaintiffs or their families in the graves claimed by them, which the Secretary of State did not object to. But held also that the relief might be limited to the spot purchased by the plaintiffs, and that the rights of the trustees to the remainder were unaffected.

22 Beav. 596 ; 2 Jur., N.S. 726 ; 25 L. J., Chan. 883 ; see also 24 Beav. 33 ; 26 L. J., Chan. 690 ; 3 Jur., N. S. 1189.

MORELAND
v.
RICHARD-
SON.

REG. v. SHARPE.

Reserved for Decision of Court of Criminal Appeal.

The defendant was indicted for unlawfully breaking and entering a certain burial ground belonging to a Dissenting meeting house, and digging open his mother's grave and taking away the body,

The evidence proved, that the defendant's family had belonged to a congregation of Dissenters, and his mother, with some others of his relatives, had been buried in one grave in the burying ground of that congregation, with the consent of those who were interested. That the father of the defendant having recently died, the defendant prevailed on the wife of the person to whom the key of the burying ground was intrusted, to allow him to cause the grave above mentioned to be opened, under the pretext that he wished to bury his father in the same grave, and in order thereto to examine whether the size of the grave would admit his father's coffin. That he caused the coffins of his step-mother and two children to be taken out, and so came to the coffin of his mother, which was under them, and was much decomposed ; and that he caused the remains of this coffin, with the corpse therein, to be placed in a shell and carried to a cart near the burying ground, and driven therein some miles away towards a churchyard, where he intended to bury his father's corpse with the remains of his mother.

The person having the keys of the ground was induced to admit the defendant into the ground and to the grave by reason of the pretext that the defendant intended to bury his father there ; and the jury found that this was only a pretext, and that his real intention from the beginning was to remove his mother's corpse. But the defendant acted throughout without

REG. v.
SHARPE.

Unlawful
disinter-
ment of a
corpse a
misdemeanour.

REG. v.
SHARPE.

intentional disrespect to any one, being actuated by motives of affection to his mother and of religious duty.

The jury convicted upon the evidence, and Mr. Justice Erle reserved for the decision of the Court the question whether the conviction could be sustained.

The case was considered by Pollock, C.B., Erle, J., Willes, J., Bramwell, B., and Watson, B.; and the judgment delivered by Erle, J.—We are of opinion that the conviction ought to be affirmed. The defendant was wrongfully in the burial ground, and wrongfully opened the grave, and took out several corpses, and carried away one. We say he did this wrongfully, that is to say, by trespass; for the license which he obtained to enter and open, from the person who had the care of the place, was not given or intended for the purpose to which he applied it, and was, as to that purpose, no licence at all. The evidence for the prosecution proved the misdemeanor, unless there was a defence. We have considered the grounds relied on in that behalf, and although we are fully sensible of the estimable motives on which the defendant acted, namely filial affection and religious duty, still neither authority nor principle would justify the position that the wrongful removal of a corpse was no misdemeanour if the motive for the act deserved approbation. A purpose of anatomical science would fall within that category. Neither does our law recognise the right of any one child to the corpse of its parent, as claimed by the defendant. Our law recognises no property in a corpse, and the protection of the grave at common law, as contradistinguished from ecclesiastical protection to consecrated ground, depends upon this form of indictment; and there is no authority for saying that relationship will justify the taking a corpse away from the grave where it has been buried. We have been unwilling to affirm the conviction on account of our respect for the motives of the defendant, but we have felt it our duty to do so rather than lay down a rule which might lessen the only protection the law affords in respect of the burials of Dissenters.—*Conviction affirmed (a).*

26 L. J., M. C. 47; 3 Jur., N. S. 192; 1 D. & B., C. C. R. 160.

REG. v. PETERS.

In re SUNDERLAND BURIAL GROUND.

REG. v.
PETERS.

By a private act (5 G. 1, c. 19) constituting the township of Sunderland a distinct parish, a vestry consisting of twenty-four persons was to be triennially elected, for the preserving better order in the new parish, for better raising and ascertaining all taxes and assessments, for buying bells for the church,

(a) *Rex v. Lynn*, 2 T. R. 733; *S. C.* 1 Leach, 497; *Rex v. Cundick*, D. & Ry. N. P. C. 13; *Rex v. Duffin and Marshall*, Russ. & Ry. 365; *Rex v. Gilles*, *id.* 366, note (b).

finishing it and keeping it in repair, defraying the expenses of the churchwardens concerning the same, providing stipends for rector and parish clerk, and salary for scavenger, and making orders and by-laws, and keeping and maintaining good rules and order in and about the church.

The statute gave the vestry power and authority to appoint and remove scavengers, to make by-laws and rules relating to the church, to rate occupiers in the parish for defraying the expenses of buying bells, finishing the church, raising stipends for rector and parish-clerk, and salary for scavenger. The statute also subjected the inhabitants to the customs of the parish of which the township had formed part for the choice of churchwardens, overseers, and other parish officers; and the vestry of the new parish, in pursuance of such custom, chose the churchwardens (one nominated by the rector), nominated the overseers and parish constables (who were afterwards appointed and sworn in, respectively, by the justices), and appointed inspectors of weights and measures, and laid rates for the purposes mentioned in the Act.

Held, that such a vestry was within the meaning of sect. 52 of stat. 15 & 16 Vict. c. 85, as a vestry "elected under the provisions of any local Act of Parliament for the government of any parish by vestries;" and must, therefore, on the requisition of ratepayers, under sect. 10 (extended by stat. 16 & 17 Vict. c. 134, s. 7), be convened for the special purpose of determining whether a burial ground should be provided, under the act, for the parish. It would be monstrous to direct a mandamus to a body which has never been called into existence.

6 Ell. & Bl. 225; 25 L. J., Q. B. 271, 2 Jur., N. S. 424.

REG. v. GLADSTONE.

In re LIVERPOOL BURIAL BOARD.

The duties of the board of guardians for the parish of Liverpool were, by statute 5 & 6 Vict. c. 88, transferred to a select vestry, consisting of the rectors, churchwardens, and overseers for the time being, together with twenty-one other elected persons, to be styled "The Select Vestry of the Parish of Liverpool," for the performance of all duties, &c., imposed upon guardians of the poor; and such select vestry has been from time to time constituted under the said act. The question whether such vestry was not "a vestry elected under the provisions of a local act for the government of the parish" within sect. 52 of the 15 & 16 Vict. c. 85, was raised on motion for a *quo warranto* against a burial board elected at a meeting of the general vestry of the parish of Liverpool.

Held that the members of the burial board for the town

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PETERS.

Vestry established by special act for general purposes may elect burial board.

REG. v.
GLADSTONE.

Vestry established by special act as guardians of the poor only. not to elect a burial board.

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GLADSTONE.

Liverpool had been duly elected. It is important that the members of a board who are to tax the ratepayers should be chosen by those who are to pay. 15 & 16 Viet. c. 85, gives the right of election to the vestry at large, unless there is a select vestry to manage the affairs of the parish. In Liverpool there is no such select vestry, the body so called being only the guardians of the poor under another name. *The Sunderland case* is distinguishable, because there the select vestry were the real governing body of the parish. *Rule refused.*

7 Ell. & Bl. 575 ; 26 L. J., Q. B. 213 (*Ex parte Urquhart, &c.*) ; 3 Jur., N. S., Q. B. 441.

In re EGHAM BURIAL BOARD.

In re EGHAM
BURIAL
BOARD.

Parish land held on special trusts not for the parish generally cannot be taken for a cemetery without the direction of the Court as to price, &c.

A vote of vestry, the circumstances having been incorrectly stated, held not binding.

The Egham burial board duly constituted, reported to the vestry on the site for the new burial ground, stating that the choice lay between two pieces of land, one the estimated cost of which was 450*l.* ; at the other, at Sandhill, belonging to the parish, and which would cost them nothing. In fact this land was held for the benefit of some of the poor only in the parish, and therefore not strictly parish land. At the vestry meeting one of the trustees of this land remonstrated against the representation that the land would cost nothing, and would not be given up, except at its utmost value. The vestry approved of the Sandhill site, and this was confirmed at a subsequent vestry. It then came to the court to say, according to the statute, upon what terms and conditions the sale should be made. The Vice-Chancellor decided that some price must be given for the Sandhill land, and directed that the opinion of the vestry should be taken in that view. Accordingly, another vestry was held, when in the first instance, the Sandhill site was again approved ; but a poll being demanded, a resolution was then passed by a majority of twenty-two votes, "that this meeting is of opinion that the site now proposed to be converted into a burying ground being surrounded by houses and cottages, is not a fit place for that purpose." The burial board now presented a petition to have the necessary terms and conditions determined for carrying out the appropriation of the Sandhill site.

Sir W. P. Wood, V.-C.—I cannot make any order on this petition. Here are lands which the burial board wish to appropriate to the purposes of a cemetery ; but being held upon special trusts, not for the benefit of the parish generally, they can only be dealt with under the direction of this court, as to price, the terms, conditions, &c. Some price must be paid and appropriated to the special use upon which the premises are now held, not being general parish property. The only case in which the question of price could be decided not to be

necessarily one of the terms and conditions so to be settled by the court would be in case the lands taken by the burial board were held upon trusts for the parish generally, and where, therefore, the trust monies, if any, would be held on the same trusts as the land. The formal consent of the vestry was one of the things necessary to be produced before me. Now, the consent which was produced was contained in a resolution of the vestry, taken at a meeting called to consider the report of the board. That report stated, incorrectly, that the Sandhill premises could be procured gratis. It is alleged that one of the members of the board contradicted that at the meeting. But the meeting may well be supposed to have paid little attention to this suggestion, and to have regarded only the report which they were summoned to consider. No separate verbal statement of that sort by any individual member of the board could or ought to have received any weight. Can I say that the assent of the vestry under such circumstances is to be held binding? I thought that there must be an assent such as the act contemplated, given on a correct knowledge of the circumstances. As soon as the opinion of the vestry comes to be taken upon the altered statement of the facts, they come to an entirely contrary opinion. I do not see that I have any authority to make any order. Dismiss the petition. No order as to costs. The burial board have no corporate property which could pay costs. Besides, this has been a misapprehension of law, not from any impropriety of motives. Their view had been approved by the Poor Law Board, and the Charity Commissioners. If there had been any improper motive established, I should have tried to get at the costs notwithstanding that they have no corporate property:

3 Jur., N. S. 957.

REG. v. SUDBURY (BURIAL BOARD).

The parishes of St. Peter, St. Gregory, All Saints, and the Hamlet of Ballington-cum-Brandon, in the borough of Sudbury, constituted part of the Sudbury Union, formed under an order of the Poor Law Commissioners; and previously to the coming into operation of the said order, the poor laws had been administered for the said parishes by a body corporate, called “The Governor and Deputy Governor, Assistants, and Guardians of the Poor in the town of Sudbury” (commonly called “The Court of Guardians”), appointed in pursuance of an act of the 1 Anne. The said governor, &c., of the poor in the town of Sudbury (constituting the body corporate mentioned in the said act of Queen Anne) still continue to be appointed in the manner directed by that act, and to perform the duties thereby imposed upon them, except so far as the same have been altered

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BOARD.

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SUDBURY.

The word parish in s. 23, 15 & 16 Vict. c. 85, does not exclude every parish which has not separate overseers, and does not separately maintain its own poor, but includes

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—
all such
places as do
so.

since the formation of the union. One poor-rate was made for the three parishes together, and the poor were maintained indiscriminately as between themselves, but the hamlet of Ballingdon-cum-Brandon had separate overseers of the poor, and maintained its own poor separately. By an Order in Council, in pursuance of stat. 16 & 17 Vict. c. 134, the burial grounds in the borough of Sudbury were closed from the 1st August, 1855, and in the same year a joint burial board was formed for the said parishes, and the said hamlet, for the purpose of obtaining a new burial ground for the common use of the said parishes and hamlet; and the board purchased a piece of land for the purpose of forming a burial ground for the common use of the said parishes and of the said hamlet. The site received the approval of the Secretary of State, as required by the statute, and the board took possession of the land and caused it to be prepared as a cemetery. The vestries of the three parishes had given their sanction, authorising the board to borrow a sum of money for the purpose of providing a burial fund under the above-mentioned statutes, and the requisite approval of the Treasury had been obtained, but the board had been unable to borrow the money, as an objection was made that the corporation not being a parish within the meaning of the 15 & 16 Vict. c. 85, ss. 23 & 52, the board was not properly constituted, and had therefore no borrowing powers conferred upon it by that statute.

Lord Campbell, C. J.—I think that the construction of sect. 23, 15 & 16 Vict. c. 85, which has been suggested in showing cause against this rule, is directly repugnant to the scope of the statute, and would defeat the manifest intention of the legislature in many instances, and therefore the word “parish” cannot be so construed. The meaning of sect. 23 is, not to exclude every parish which has not separate overseers, and does not separately maintain its own poor, but to include all such places as do so under the word “parish.”

Wightman, J.—I am of the same opinion. In this case the exception in the interpretation clause, “unless there be something in the subject or context repugnant to such construction” applies.

Erle and Crompton, JJ., concurred.

Rule absolute for a Mandamus.

ELL. BL. & ELL. 264; 27 L. J., Q. B. 232; 4 Jnr. N. S. 948.

VINER v. TUNBRIDGE (OVERSEERS).

Case stated on appeal.

VINER v.
TUNBRIDGE.

The parish of Tunbridge, maintaining its own poor, includes within its area the town of Tunbridge Wells and the hamlet

of Southborough. The former is about five miles, and the latter three miles, from the town of Tunbridge. The town of Tunbridge Wells has an ecclesiastical district formed under the statute 58 Geo. 3, c. 45; it has its own church-rate, and has not, since 1849, contributed to the general church-rate of the parish, but it did so contribute for the period of twenty years, and has also its own separate churchwardens—the churchwardens appointed for the mother church at Tunbridge town having no jurisdiction or any concern within the Tunbridge Wells ecclesiastical district, as regards church or ecclesiastical matters. A vestry is held at Tunbridge Wells for the appointment of their churchwardens, making a church-rate, passing accounts, &c. The hamlet of Southborough has a church, and a district assigned to it under the 1 & 2 Wm. 4, c. 38, but no separate church-rate is levied upon the district, which still contributes to the general church-rate of the parish. Meetings are held in the vestry of this church for the purpose of appointing churchwardens, &c. The regular vestries for the whole parish are held at the mother church at Tunbridge town, at which a church-rate is made for the whole parish, except the Tunbridge Wells ecclesiastical district. Tunbridge Wells and Southborough have each their separate burial grounds. Neither Tunbridge Wells nor Southborough appoints separate overseers from the rest of the parish, nor maintains separately its own poor, there being a common poor-rate for the entire parish. The ecclesiastical district of Tunbridge Wells forms a considerable part of the parish of Tunbridge, and contains a considerable portion of the property rateable to the relief of the poor in the said parish. On the 8th of November, 1855, a meeting of the inhabitants of the parish of Tunbridge was held in the vestry-room of the mother church at Tunbridge town, in pursuance of notice, copies of which had been affixed to the doors of all the churches in the parish, including that at Southborough, but excepting those within the ecclesiastical district of Tunbridge Wells.

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TUNBRIDGE.

A part of a parish may have a separate burial board—held by implication the rest of the parish may also appoint a separate board.

At this meeting a burial board was agreed to be formed for such part of the parish of Tunbridge as is not included in the Tunbridge Wells ecclesiastical district. No vestry (or meeting in the nature of a vestry) was held at Southborough church between the 20th of October and the 8th of November, 1855, nor were the inhabitants of Southborough consulted as to the formation of the said burial board, further than that they were, as inhabitants of the parish of Tunbridge, requested by the said notice to attend the vestry meeting. The burial board, purporting to be constituted by the inhabitants of Tunbridge in accordance with the resolutions of the said meeting, created and made a cemetery at the end of Tunbridge town, which is furthest from Southborough; and a rate was made, and allowed by the justices, entirely for the purpose of defraying the expenses incurred by the said burial board. The appellant con-

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tended that the rate was altogether void, and could not legally be enforced by the justices, the burial board not being legally constituted, or appointed for a legally constituted burial district in the manner required by the 18 & 19 Viet. c. 128, ss. 11, 13.

Lord Campbell, C. J.—I think I am now in a situation safely to answer the question, whether Tunbridge Wells is entitled to have a burial board of its own? I think it is. If so, it follows as a necessary consequence that the rest of the parish must take the proper steps, and constitute a burial board for the parish exclusive of Tunbridge Wells. It seems to me there is no doubt, that, being an ecclesiastical district, and having a vestry for all ecclesiastical purposes, and not separately maintaining its own poor, it may have a burial board of its own exclusive of the parish; and if it may have a burial board of its own, then that the rest of the parish, by implication, may appoint a burial board of its own, exclusive of the township.

Wightman, J.—I have not heard the whole argument, and therefore give no opinion.

Erle, J.—I am of opinion that the burial board was well constituted. Sect. 11 of stat. 18 & 19 Viet. c. 128, has made provision for burial boards for parishes, with the addition of other places, where places can be added to the parish, and then the parish, with these places, are to constitute a burial board. Then comes the 12th section, and provides for a division of a parish. Under that section the vestry of a district not separately maintaining its own poor may appoint a burial board, and exercise the same powers in relation to such burial board as are vested in the vestry of a parish separately maintaining its own poor, so that the district may be severed from the mother parish, and have a separate burial board. Then it is said, that such division having taken place, there may be a separate burial board for Tunbridge Wells; but the rest of the parish cannot appoint a burial board. Such a case seems to me to come clearly within the statute. If the parish is too large to have one burial board for the parish, there may be a burial board for part of the parish severed from the rest; then, by implication, the rest of the parish may have a burial board of its own, although no express provision has been made in the statute.

Crompton, J., concurred.

Judgment for Respondents.

28 L. J., M. C. 251, Q. B.; 5 Jur. N. S. 1293.

REG. v. WRIGHT.

Demurrer to return to a mandamus.

The parish of Middlewich is an ancient parish, consisting of fifteen distinct townships, of which Minshull Vernon is one, each of which said townships has separate overseers, and separately maintains its own poor. The inhabitants of the whole parish assembled in one vestry, and there was an ancient parish church with burial ground attached thereto, which church and burial ground were within the township of Middlewich. On the 22nd June, 1858, a meeting of the vestry of the parish was held for the purpose of determining whether a burial ground should be provided for the said parish, and to appoint a burial board, if necessary, when it was resolved that a new burial ground should be provided for the said parish, and certain persons were appointed to be the burial board of the said parish, who borrowed upon mortgage of the rates for the relief of the poor of such parish the sum of 3000*l.* from the commissioners for carrying into execution the 14 & 15 Vict. c. 23, for the purpose of providing and laying out a burial ground and building the necessary chapels thereon. To enable them to make the first annual payment of the principal and interest, it became necessary for the burial board to call for a sum out of the rates for the relief of the poor, and the burial board apportioned such sum among the fifteen townships forming the parish, and the amount apportioned to the township of Minshull Vernon not having been paid by the overseers, a mandamus was obtained, commanding them to pay the same according to the provisions of the acts 16 & 17 Vict. c. 134, and 17 & 18 Vict. c. 87, or show cause to the contrary, &c.

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Except under the 18 & 19 Vict. c. 128, a burial board for a parish cannot apportion the sums to be contributed by various townships within the boundaries of the parish.

The return stated, that the township of Minshull Vernon is a place "having separate overseers of the poor, and separately maintaining its own poor;" and that the burial board in the said writ mentioned was appointed after the passing of the Burial Acts Amendment Act, 1857 (20 & 21 Vict. c. 81), and that the said burial board was appointed without the approval of the secretary of state, as required by section 9 of that act; and that the township of Minshull Vernon has a separate and sufficient burial ground attached to a new church, named St. Peters, Leighton-cum-Minshull Vernon, in the said township of Minshull Vernon, and that a particular district had been assigned to the said church for ecclesiastical purposes, with an incumbent, who performs the duties, &c., burials in the said yard; and that the said burial board was appointed and the said money was borrowed without the authority of the vestry, or meeting in the nature of a vestry, of the particular district aforesaid, or township of Minshull Vernon aforesaid.—Demurrer to the return.

Per curiam, Q. B.—The difficulty in which the burial board

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of Middlewich is placed appears to be this—that they cannot apportion the sums to be contributed by the various townships within the boundaries of the parish, unless they bring themselves within the provisions of the 18 & 19 Vict. c. 128, s. 11, and then they are hit by the 20 & 21 Vict. c. 81, s. 9, which renders the consent of one of the secretaries of state necessary to their proceedings. We think the objection taken is fatal to this mandamus.

Judgment for the defendants.

8 Jur. N. S. 260.

REG. v. WESTGATE AND ELSWICK (BURIAL BOARD).

REG. v.
WESTGATE
AND
ELSWICK.

Private
burial
grounds
closed by
order in
council
cannot be
maintained
and repaired
by the burial
board of the
parish.

Mandamus.—Reciting, that on the 1st of May, 1854, by an order in council, under the 16 & 17 Vict. c. 134, s. 1, burials had been discontinued in the burial ground, called St. Paul's churchyard, situate in the township of Westgate, in the borough of Newcastle; that a joint burial board had been appointed for the parish of St. John, and the townships of Westgate and Elswick; that the fences of the said burial ground required repair; that there were no churchwardens liable to keep it in repair, and no fund legally chargeable with maintaining it; and commanding the burial board to do the necessary repairs.

Return, that the burial ground was not a churchyard, or burial ground of any parish, or of any place having separate overseers and maintaining its own poor, but is the property of certain private persons.

Demurrer.

Cockburn, C. J.—The words of the 18th section are too strong to be got over by the prosecutors. We cannot strike out the words “of any parish,” and if we gave them any other construction or meaning than the natural one, I think that we should virtually be striking them out. If there were any doubt in the matter an additional argument is derived from the fact, that a distinction is observable as kept up throughout the statutes on this subject between parochial burial grounds and others.

Wightman, J.—I own that I entertained some doubts; the latter part of the section seeming to me to point rather at a burial ground in a parish, than to a burial ground belonging to a parish. But on a reference to the other statutes, it seems to me that this enactment may possibly be limited to the burial ground “of a parish,” properly so called. And the difficulty of a private burial ground being left unprotected, is obviated by the power which is given by a subsequent statute to vestries, to purchase burial grounds situate in but not “of” their parish.

Blackburn, J.—I agree that this section is clearly confined to burial grounds “of a parish,” that is, belonging to a parish, and does not extend to burial grounds of private individuals situate in a parish.

Judgment for the defendants.

31 L. J., Q. B. 205.

HORNBY v. TOXTETH PARK (BURIAL BOARD).

HORNBY v.
TOXTETH
PARK.

Judgment.

Sir. J. Romilly, M.R.—The bill prays a declaration that the plaintiffs are alone entitled to perform the burial service in the consecrated portions of Toxteth Park Cemetery, and to receive fees for so doing. It seeks an account of such fees against the defendants, and also an injunction to restrain them from interfering with the plaintiffs in the performance of those religious observances.

On looking into the Burial Acts, it appeared to the plaintiffs that the incumbent of Toxteth Park was entitled to receive the burial fees. Each of the plaintiffs seems to have claimed to fill that character; and, thereupon, being unable to decide that question, but in order to exclude all other persons, and assuming that Toxteth Park must have such an incumbent, and that, at all events, one or more of them must be such incumbent or incumbents, the plaintiffs, “for the purpose of avoiding any questions amongst themselves, have mutually agreed with each other that all fees, dues, and perquisites to which they or any of them are, or is, or shall be entitled in respect of burials in Toxteth Park Cemetery shall be divided between themselves, while they respectively hold their respective incumbencies” in certain specified proportions. The fees for burials in cemeteries authorised, as Toxteth Park is, under the Public Burial Acts, are payable and receivable according to the mode regulated by these acts, except so far as they are affected by local acts relating to the place where the burials occur. Independently of the provisions of these statutes, such fees are not payable or receivable.

The first question which arises in ascertaining the effect of this section (32nd section, 15 & 16 Vict. c. 85), is the meaning to be attached to the word “parish.” The second is the meaning of the word “incumbent.” The word “parish” is defined in the 52nd section of the act to mean “every place having separate overseers of the poor, and separately maintaining its own poor.” It is admitted that Toxteth Park is a place having separate overseers of the poor, and that it separately maintains its own poor; and that it is not in that respect mixed up with any other place, or with the rest of the parish of Walton-on-the-Hill. It follows, therefore, although, according to ancient boundaries, Toxteth Park is, and always has been, a portion of the parish of Walton-on-the-Hill, still that within the meaning of this act Toxteth Park is to be regarded as a distinct and separate parish; and that if it had been thought convenient to have one common burial ground for the whole of the parish of Walton-on-the-Hill, including in that designation the district of Toxteth Park, it would, under section 23 of the Burial Act,

A district being part of a parish but having separate overseers, and separately maintaining its own poor, is a “parish” within the meaning of the burial acts.

Neither the incumbent of an ancient parish, not having previously received fees in respect of burials in an ecclesiastical district carved out of the parish, nor the incumbent of a church within the district, having no burial ground in which the inhabitants thereof have a right to be interred, can claim fees in a cemetery established for such district under the burial acts.

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have been necessary to provide the burial grounds for Walton-on-the-Hill and for Toxteth Park as two distinct parishes; and a joint burial board must have been formed, which under the 24th section of the act, would have been incorporated by the name of "The Burial Board for the parishes of Walton-on-the-Hill and Toxteth Park, in the county of Lancaster;" and under the 29th section, arrangements would have had to have been made between the vicar of Walton on the one hand, and the incumbent of Toxteth Park, assuming such to exist, on the other hand, for the purposes mentioned in that section. I then turn again to the 52nd section of the act for the purpose of ascertaining the meaning given by that act to the term "incumbent." Taking the two definitions together, I am of opinion that the vicar of Walton cannot, in that character, claim these fees in respect of the burial of persons dying within Toxteth Park, because, in this respect, as I have already observed, it is, for the purpose of this act, a distinct parish from Walton. For the same reason I am therefore of opinion that the first plaintiff on the record, who is such vicar, cannot, upon the facts established before me, be considered to be the incumbent of Toxteth Park within the meaning of this act, and for the purposes of it. He clearly is not so *de facto*, for, since his induction into the vicarage of Walton, he has treated Toxteth Park as a place apart from his vicarage. He has not buried or married the inhabitants thereof as being dwellers within his parish. If he be the incumbent *de jure*, still the clause only provides that the incumbent of the parish shall have the same rights for the performance of religious service in the burial of the remains of the inhabitants, and shall be entitled to receive the same fees in respect of such burials, which he has previously enjoyed and received. I am of opinion, therefore, that, regarding the question solely on the construction of the public acts, the plaintiff, Mr. Hornby, is not the incumbent of Toxteth Park within the meaning of the word as used in the 32nd section, or in that character entitled to receive the fees in question. The 35th section is relied on in his behalf. In my opinion, this section cannot assist his case unless he were the incumbent of Toxteth Park, which, in my opinion, he is not, for the reasons I have already stated. There is nothing in the two other public acts which affects this question, which rests solely on the construction of the sections of the 15 & 16 Vict. c. 85, to which I have referred. It is true that this act does not deprive the vicar of Walton of any rights which he previously had, and which he might have enforced or maintained in any court of law; but I am of opinion, for the reasons I have already stated, that, for the purposes of a cemetery established under the authority of this act, it does not by itself give to or confer upon him any right to receive fees for the performance of the burial service in the consecrated portion of the cemetery of Toxteth Park.

The next plaintiff on the record is the incumbent of St. James's Church, which is situate within the district of Toxteth Park. This is established under statute 14 Geo. 3, c. 94, which enacts,—“That no corpse shall be buried within the said new intended church or chapel, but only in the said new intended churchyard or cemetery thereunto belonging, which churchyard or cemetery is hereby vested in the churchwardens, or persons acting as or in the nature of churchwardens, for the time being, who are hereby authorised and empowered to dispose of, sell, or convey burial places in the churchyard or cemetery to any person or persons, or their respective heirs, willing to become purchasers thereof.” The clause then goes on to provide for the application of the moneys so to be derived. The next clause saves all the rights of the rector and vicar of Walton. The next clause refers to the fees, and is in these words :—“It is enacted, that there shall be paid to and into the hands of the minister of the said new intended church or chapel for the time being, for the performance of the several offices of minister, clerk, and sexton, the double fees, dues, and perquisites, which are usually and of right ought to be paid for every marriage, churching, burial, and opening the ground for graves in the churchyard or cemetery at the parish church of Walton aforesaid ; and the minister of the said new intended church or chapel shall from time to time collect and receive all such double fees, dues, and perquisites, and account for and pay by two equal payments in every year on every 24th June and 25th December, one moiety, or half part thereof, to and into the hands of the vicar of the said parish of Walton for the time being, or his agent in that behalf, to be divided between himself and the clerk and sexton of the said parish church of Walton, within ten days after such vicar or his agent shall have received the same, in such shares and proportions as the fees payable at the said parish church of Walton are and of right ought to be divided ; and the remaining moiety, or half part thereof, shall, on the said half-yearly days, be divided amongst the minister, clerk, and sexton, of the said new intended church or chapel, in such shares and proportions as fees of the like nature and for the like services usually are and of right ought to be divided amongst the vicar, clerk, and sexton of the said parish church of Walton.” The question is, what right this act gives to the incumbent of St. James and to the vicar of Walton, with reference to the fees for burials in the cemetery of Toxteth Park ? The first observation which occurs is, that no district is expressly defined as belonging to this church or chapelry ; the pews and the right of sepulchre are to be sold indiscriminately to all who think fit to buy, whether residing in Toxteth Park or out of it. It is not a burial ground attached to Toxteth Park, or, indeed, to any defined place. It cannot be treated as the burial ground of Toxteth Park, for it is not one in which any inhabitant of Toxteth Park has any right of being

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buried. From its establishment, up to September, 1844, this church or chapel, with its cemetery, except that both are situate within the district of Toxteth Park, had no more connection with Toxteth Park than with any other place that lies so near to it as the furthest extremity of Toxteth Park. It is true, that on the 3rd September, 1844, the Queen, by Order in Council, under the provisions of the Church Building Acts, assigned a district to the consecrated chapel of St. James at Toxteth Park, not, however, making it co-extensive with Toxteth Park, and leaving the burial ground just as it was before—that is, leaving it a private cemetery, in which any one might purchase the right of interment, and the profits to be derived from which were to be applied in decorating the church. It is clear, I think, from these facts, that the incumbent of this church cannot claim to be the incumbent of Toxteth Park. At the utmost he is only incumbent of a portion of Toxteth Park set apart for ecclesiastical purposes. Many large parishes have been divided into ecclesiastical districts, and incumbents given to each of those districts; but none of the incumbents, either separately or jointly, were, or could be considered, as the incumbents of that parish. Is the plaintiff, then, an incumbent of an ecclesiastical district within the terms of the definition of the word “incumbent” in the 52nd section, and as such entitled, as of right, to the fees in question, or to any portion of them? To sustain this, he must establish that he (the clergyman) would have been entitled to the fees, had the body been buried in the churchyard or burial ground of the parish from which it came. In my opinion, that means such burial ground attached to the parish or ecclesiastical district of which he is incumbent, as the inhabitants of that district would have a right to be interred in. It does not mean that any speculation or conjecture is to be formed, whether, if no cemetery had existed in Toxteth Park, the deceased person would have bought a right of interment in the burial ground attached to any other church; but the burial ground of St. James is not, and never was, the burial ground of Toxteth Park. The next words in the section, which relates to the burial ground of the ecclesiastical district, in case such district had a burial ground at the passing of this act, do not, in my opinion, assist his contention. St. James, treating it as an ecclesiastical district, had no burial ground at the passing of this act, and has not now any burial ground in the sense intended by this clause, if I construe it correctly. There is a burial ground attached to the church of St. James, but it is one in which the right of interment can only be obtained by purchase. It is in no sense the burial ground of the ecclesiastical district defined in 1844, in which the inhabitants dying within that district have any right to be buried. If it be contended that the incumbent of St. James ought, under the equitable construction of this clause, to be considered entitled to be kept unaffected with regard to the fees

paid in respect of burial of remains of inhabitants of Toxteth Park which he previously received,—if his cemetery had been closed, then the answer is, that the formation of the burial ground at Toxteth Park leaves him, and the burial grounds established by the local act, exactly in the same situation as they were in before; for, by the 5th section of the second act, the 16 & 17 Vict. c. 134, it is provided that the act shall not extend to authorise the discontinuance of burials, or to prevent the burial of the body of any person in any cemetery established under the authority of any act of parliament (a). Neither, therefore, on the ground that the incumbent of the church of St. James is the incumbent of Toxteth Park, nor on the ground that the cemetery in which he is entitled to perform the service has been discontinued, or the right of burial there altered, can the incumbent of St. James insist on the right to receive the fees paid for the performance of the burial service in the Toxteth Park Cemetery. The same observations apply to the vicar of Walton, so far as his interest in, or connection with, the church of St. James is concerned. He has a right to half the burial fees received by the incumbent of St. James for the performance of the burial service in this burial ground. This right can in no respect improve his position as incumbent of Walton, or make him an incumbent of Toxteth Park; and as the burial ground is left unaffected by the act under which the cemetery in Toxteth Park is created, he is not entitled to require to be paid the fees received for burials there. It may be, no doubt, that the burials in the cemetery created under the 14 Geo. 3, c. 94, may be diminished by the establishment of the new cemetery in Toxteth Park; but this, in the absence of specific enactments, gives the persons interested in the cemetery, so injuriously affected, no equity to have the loss, occasioned to them by the establishment of a neighbouring cemetery, made good to them (even if it were established, which here it is not). If such an equity existed, it would apply equally to those persons who are interested in the application of the moneys paid for the right of interment there. But, in my opinion, the Public Burial Act does not apply in such cases. I am of opinion, therefore, that the second plaintiff on this record is not entitled to maintain this suit.

The next plaintiff on the record is the incumbent of the church of St. Michael in Toxteth Park. This church was established by a local act of the 55 Geo. 3 (1815), c. 70. It recites that John Cragg had lately bought and set apart a piece of ground in Toxteth Park for the site of a church, together with a cemetery to the same, and had conveyed it to trustees, and built a church on it. It vests the property in the trustees, and enacts that the church and cemetery shall be set apart forever for the service of Almighty God, according to the liturgy

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(a) See *R. v. Manchester (Justices)*, p. 215 [A. N.].

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and usages of the Church of England, and called the "Church of St. Michael, Toxteth." There are double fees appointed for the funeral service, one-half of which is to be paid to the vicar of Walton. The 15th and 16th sections relate to the burial within the cemetery. The 15th provides that the burial places shall be vested in trustees, who are authorised to sell such places of burial for places of burial to any person willing to become a purchaser thereof; and the act provides for the application of the money to arise from this source. The 16th section provides that one-fourth of the cemetery shall be reserved for the burial of the poor who died in Toxteth Park, within the circuit of one mile from the church. Except for this 16th section, the church of St. Michael, would not, in substance, differ from the church of St. James beyond this, that it has not hitherto been erected into an ecclesiastical district by any Order in Council, as has been the case with the church of St. James. It is, therefore, except as to one-fourth, a private burial ground, the profits of which belong to private individuals, which is in no degree interfered with or discontinued by reason of the establishment of the cemetery in Toxteth Park, and to which the observations I have already made relative to the cemetery of St. James equally apply. These are not, in my opinion, affected by the right of the poor to be buried there, which is confined to those who die within a mile of the church. This is not co-extensive with Toxteth Park, nor is St. Michael's an ecclesiastical district; so that, in no sense, can it be considered as either a church or cemetery for the entire district of Toxteth Park, or for any ecclesiastical division of it. It is, in truth, a mere private speculation to afford church accommodation to persons residing in the neighbourhood, whether inhabitants of Toxteth Park or not, and seeking to obtain some remuneration for so doing from the sale of pews and church sittings, and places of burial, indiscriminately, to all who may wish to obtain them.

The last plaintiff on the record is the incumbent of St. John the Baptist Church in Toxteth Park. This district was created by an Order in Council of 23rd September, 1837, under the authority of the Church Building Acts, 58 Geo. 3, c. 45, and 59 Geo. 3, c. 134, which enable the Ecclesiastical Commissioners to divide any parish into two or more districts for ecclesiastical purposes. The district is accordingly defined by the Order in Council as a portion of Toxteth Park, and the district is named "the District of St. John the Baptist, Toxteth Park." The church itself was erected by the Ecclesiastical Commissioners to afford seats to 1800 persons, of which 800 are free. This church has no burial ground attached to it, the grant of the land having provided, as a condition, against the exercise of any such right and accordingly the Order in Council gives no such right. In truth, however, except that this church was erected by the Ecclesiastical Commissioners, and except that private burial grounds are attached to St. James's and St.

Michael's, there is no distinction between any of these churches, or the rights of the incumbents of them, so far as regards the question before us. They are all in the nature of chapels of ease to the parish of Walton. Assuming that parish to include the township of Toxteth Park, they confer no rights on the incumbents beyond those specified in the provisions contained in the instruments creating them.

I have now gone through the case of each of the four plaintiffs. I have stated the reasons which have led me to the conclusion that no one of them separately is of right entitled to any of the fees received for the performance of the religious service over the remains of persons dying within Toxteth Park, and interred in that cemetery. It remains to be considered whether, by any combination of all or some of them, that right can be sustained. The observations I have made in considering the case of each show that, in my opinion, no union of them can confer that right upon them. If the incumbent of St. James could claim the fees in respect of the burials of persons dying within the district attached to that church, and if the incumbent of St. John the Baptist could do the same with respect to the ecclesiastical district so named, then, though not entitled to receive any fees in the character of incumbents of Toxteth Park, they might have been entitled under the provisions contained in the 52nd section, under the definition of "the incumbent," and the amount to be received must, in case of disagreement, have then been settled by the Bishop of the diocese; but such is not the case. If the plaintiffs could make out any case individually, it would, in my opinion, only amount to such a case as is last mentioned, where the interposition of the bishop, but not that of his court, is required; but even to that extent the case before me fails. It is one which the act does not touch, and possibly it is one which was not intended by the legislature that it should.

It may be convenient that I should recapitulate shortly the view I take of this case. The fact of the parochiality, or extra-parochiality, of Toxteth Park is immaterial for the present purpose. The statute makes that district a parish, and a parish distinct from the parish of Walton. Previously to, and at the time of, the establishment of this cemetery, although there were several persons who were incumbents of churches within the district of Toxteth Park, there was no one person, or combination of persons, who filled the character of incumbent of Toxteth Park as defined by the act. The incumbents of the churches within Toxteth Park, even if they were entitled to be treated as incumbents of ecclesiastical divisions of Toxteth Park, have no burial grounds attached to such divisions, in any one of which it can be said that the remains of persons dying within Toxteth Park would have been buried if it had not been for the existence of the Toxteth Park Cemetery; and, without this being established, the incumbents of such churches can have no

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claim to participate, as of right, in the fees received for the performance of the religious service on the interment of bodies in Toxteth Park Cemetery. I regret much the disturbance of the arrangement sanctioned by the bishop, but I have no power to compel any return to it. All that belongs to me is, to consider the case made by the plaintiffs. I have done so, and I am of opinion that they are not, individually or collectively, entitled to the relief they ask; and I must, therefore, order this bill to be dismissed.

31 L. J. Ch. 643; 8 Jnr. N. S. 531.

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Demurrer to a return to a mandamus.

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A burial board duly appointed for an entire common law parish, divided into districts for ecclesiastical purposes only, is rightly constituted.

A burial board was duly constituted for the parish of Walcot, and the said board had incurred expenses in carrying out the purposes of the board, which expenses were chargeable upon, and to be paid out of the rates for the relief of the poor of such parish; and a certificate under the hand and seal of certain members of the board was duly served upon the overseers, requiring them to pay such sum to the clerk to the said board, which sum they, the overseers, had refused to pay.

The return stated, that the church of Walcot was a rectory, and that before the constitution of the said burial board, the said parish had been divided into three separate parishes, namely, Walcot St. Swithin, St. Saviour, and Trinity parish, for all ecclesiastical purposes whatsoever, and at the time of such division becoming complete, there was in each of such divisions a separate church, and that after the said division had become complete, and before the constitution of the said burial board, the said churches respectively became and were used and appropriated as the parish churches of the said three separate parishes respectively.

Demurrer, and joinder in demurrer.

Cockburn, C. J.—I am of opinion that the return is bad, and that our judgment must be for the crown. In the first place, it is important to see how the case would have stood if the 15 & 16 Vict. c. 85, and the subsequent act of parliament which applied—the first act, which only applied to the metropolis—to the rest of the kingdom, had alone passed the Legislature. Now, looking to the 15 & 16 Vict., I am of opinion, that the whole entire parish would have had the power to establish a burial board for the purpose of maintaining a common burial ground for the interment of the dead in the old common law parish, now divided into three ecclesiastical parishes. The 10th section of that act of parliament speaks of the “vestry of such parish,” and empowers such vestry to appoint a burial board; and the act of parliament goes on to

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give the burial board the necessary powers, and amongst others the power of purchasing ground for the purpose of burial, and of charging the price upon the rates of the parish, to be repaid out of those rates in a given number of years. It empowers them to borrow money to meet that purpose, and to charge the expenses year after year, as they may arise, upon the rates of the entire parish. There is no mention in that act, or reference in that act, to sections of an entire common law parish into which it may have been divided. The act of the 58 Geo. 3, and other acts, come under that branch of legislation for ecclesiastical purposes. Now, in the interpretation clause of that act of parliament, the term "parish," as used in the act, is explained to mean "any place maintaining its own poor." The whole scheme of the act is to throw the expense of burial upon the poor rates of the parishes that avail themselves of this act of parliament. There is no provision whatever for ecclesiastical parishes into which the common law parish may be divided under the acts of parliament; and inasmuch as the expenses of public burial are to be defrayed out of the poor rates of each parish or place maintaining its own poor, it is quite plain in that act of parliament there could be no means whereby an ecclesiastical parish or district, as distinguished from a common law parish, could probably meet that expense. Now, I cannot suppose that the legislature, when it gave the power to the proper authorities to stop up places heretofore used for the purpose of burial, and gave power to parishes to provide new places of burial in such cases, could have intended that ecclesiastical parishes, as distinguished from parishes in the general sense of the term, should be left without the means of meeting an exigency of so great and important a character. Then, if we find the term "parish" is, by that act of parliament, intended to mean a place maintaining its own poor—if we find the term used in the largest possible sense, and we find no provision made for the case of a section of such general parish, divided from it or carved out for ecclesiastical purposes, it is impossible to suppose that the legislature could have intended to have meant such a case. The only way in which it appears to me consistent with common convenience and common sense, is to interpret the word "parish" there, so to have the largest signification, as distinguished from the parish for ecclesiastical purposes designated in the more recent act of parliament, and to consider the term "parish," embracing the whole of any parish divided into minor sections for ecclesiastical purposes, but united for the maintenance of the poor and burial grounds. Then, if it stood on that act of parliament alone, I should entertain no difficulty in coming to the conclusion that the vestry of the whole united parish had done no more than, under that act, they were entitled to do in appointing this common burial board for common purposes throughout the whole of the parish. But our attention is drawn to subsequent

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aets of parliament. I own they tend, in my mind, to confirm rather than throw any doubt upon the construction which I am prepared to put upon that act. In the first place, we have the provisions of the 18 & 19 Viet. c. 128, to which attention has been called, which excepts from the former act, to a certain extent, the case of a "parish, township or other district not separately supporting or maintaining its own poor, which has heretofore had a separate burial ground." Therefore, if one of these ecclesiastical parishes, which clearly does not maintain its own poor as separate from and independent of the common law parish, had a separate burial ground, then those provisions would not be applicable to such a case. What does this show? Why that, but for these provisions, such a case of such a parish or place would have been within the provisions of the 15 & 16 Viet. Then we have a subsequent act, which has been referred to, the 20 & 21 Viet. c. 81, which relates to a case of a parish or district not maintaining its own poor, and which has not had a separate place of burial. The former division having had reference to a parish, district, or place, having a separate place of burial, the legislature extends the provisions of that act to a place which has not had a separate place of burial. Then it is provided that such a parish, district, or place may avail itself of the provisions of the former act of parliament, and constitute its own burial board, and have a separate place of burial defraying the expenses incident thereto, to be paid by a rate levied for that purpose. Then follows this remarkable provision, that, as soon as that shall have been done, then all the powers of "any other vestry or meeting and burial board, if any, shall then cease and determine as far as relates to such parish, new parish, township, or district as aforesaid." Now it is unnecessary to consider that to-day, because this return does not raise the question of how far, if the parish of St. Saviour's had appointed a burial board, that would oust the vestry or the burial board of the general parish of their power, because it does not appear in this return that they had exercised the powers vested in them under the 5th section of that act of parliament; but it appears to me that that section is very strong indeed to show that, in the absence of any such legislation as is contained in this act of parliament, the 15 & 16 Viet. would necessarily have embraced the present case, because there are provisions that, upon the minor parish appointing the burial board, the power of the old burial board shall cease: this shows that, but for this legislation for the particular case in question, both powers would remain untouched and unaffected to the full extent under the former act of parliament. That, to my mind, is very strong and conclusive to show that—but for the 23 & 24 Viet. c. 64—the whole united parish would have had full power over such a case as the present,—which is a case embraced in subsequent legislation. I entertain no doubt that, under the 15 & 16 Viet. c. 85, the

vestry of the entire parish had power to appoint a burial board, and that board, when appointed, had power to exercise all those powers and rights given to them by the 15 & 16 Vict. c. 85, and that the burial board so established had jurisdiction over all the component parts of this entire parish, including these minor ecclesiastical parishes, established for ecclesiastical purposes. I am of opinion, therefore, that this was a proper exercise of the power vested in the vestry by the 15 & 16 Vict., and that our judgment ought to be for the crown.

Crompton, J.—I am of the same opinion. I think this return is bad. It comes to this, that this parish has been divided for ecclesiastical purposes under the Church Building Act. Circumstances occurred before the passing of the 23 & 24 Vict. which appear to have some material bearing on the case as to making the rate and making the burial board after the 20 & 21 Vict. I think you ought to read this as occurring after the 20 & 21 Vict., and before the 23 & 24 Vict. I think it quite clear under the earlier act of parliament, the 15 & 16 Vict., that the construction is that which has been mentioned by my lord, and relied upon in the argument, that the bodies which were to constitute the burial boards are the vestries for secular purposes—for poor rate purposes. This is not only pointed out by the interpretation clause in the act, but I think is very strongly so from the whole tenor of the act. I think it was the real policy of the framers of the original act to make this a matter for the vestry having the regulation of the secular matters—that is, poor rates. The act provided a cemetery for all her Majesty's subjects, taking care not to hurt the consciences of any persons by making a proper division. It is quite clear to my mind that they intended by these acts to do no more than to make it a matter for the parochial authorities acting for the established church. That appears to be the meaning of it from the words of the act. I think it clear, under the 15 & 16 Vict., that they are the persons to appoint where there is a vestry for the poor rates. It is a strong answer to that to say that there are no provisions and no mode (as put by the Lord Chief Justice early in the case, and never answered), that there is no mode by which the smaller ecclesiastical district could raise its funds. After looking at some of the acts for comprising two or three districts for maintaining their own poor, there is no difficulty, because the act says in such cases as that contemplated in the 18 & 19 Vict., they make their orders on the several parishes and get the rates; but under the 15 & 16 Vict., the smaller body could not possibly affect the rates, for the poor rates are to be levied in the original parish. I take it to be quite clear that, if it stood alone on the earlier legislation, the power is in the parish authorities, they having power over the poor rates, and maintaining their own poor, and not the ecclesiastical district. Then we come to see whether it is brought within any of the other sections. It appears to me that there has been a

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change in the notion of the legislature, and in the latter acts they wish to bring it back more within the ecclesiastical authorities where there is any common bond or union. Then, in 18 & 19 Vict., first, where there are several parishes united together by some common ecclesiastical bond, there are provisions of that kind, and then there are other provisions, and the ones I suppose to be applicable to this case are the 12th and 13th sections. The 12th section provides for the ease of a vestry of a parish or district—and I think that comprehends this place in that respect—not separately maintaining its own poor, but which has a separate burial ground. It does not appear upon the return that it is brought within that category. I think that is out of the question. I should remark, that I do not see in this act, if they do not appoint, that the power of the vestry for the larger district for the purposes of poor rates is taken away. Supposing that no board is appointed under the 12th section, I find no words taking away, as contended for, the power of the larger body. It is not necessary to consider that now, because it is not on the return that there is a burial board. I have considerable doubts as to how far that would take away the power, because there are no words saying that the power of the larger body shall cease. I doubt whether that could take away, necessarily, the power of the general body; but, be that as it may, the return not being good under that, I come next to the 20 & 21 Viet. Now, by the 5th section of that enactment is repeated very much the commencement of the enactment of 18 & 19 Vict., and it makes a provision for the purpose of these new districts, but not insisting on there being necessarily a burial ground. It enacts, “the vestry, or meeting in the nature of a vestry, of any parish, new parish, township, or other district not separately maintaining its own poor, and which has no separate burial ground.” Now, these words are, I think, permissive of what follows in the act. In some cases “may” is used to exercise some judicial functions; but, looking to what follows in the act, it appears to me to be permissive—“and such vestry or meeting, the burial board appointed by it shall exercise and have all the powers which they might have exercised.” This would give that smaller ecclesiastical district power of appointing a burial board. Then I come to the doubt which was expressed on the former statute, because it seems clear to my mind, as expressed by the Lord Chief Justice, that those words show that, unless brought within the category of the latter part of the act, the powers were not to cease. “Provided always that all the power of any vestry or meeting and burial board;” that is to say, where there are those words which have given those powers by the former legislation to the vestry of the larger body we are now making provision for, that, and we say if they shall exercise that option, in effect they shall appoint, “that all the powers of any other vestry or meeting and burial board,” that

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might be the larger body, "if any, shall then cease and determine." I should ask, when? It is clearly when they have made an appointment. It is sufficient for this case to say that they have not, according to this return, made any appointment, and the powers of the board have not ceased and determined. I think it is a very important point to consider, as the Lord Chief Justice has said, as to the right of construction—that that would not destroy any of the powers they have exercised. It may probably be that if the smaller district also wished to have a board of their own, they might. I do not see anything to say that they are to be relieved from any obligation that before the appointment might have been thrown on them. I think upon all these grounds the return is bad.

Blackburn, J.—I am of opinion that, upon this return to the *mandamus*, our judgment must be for the crown. The original act was for the metropolis alone; but the legislature chose to expand the enactment to the country at large, and, instead of making and providing a new form of statute to be applicable to the exigencies of the country, they were pleased to enact it by applying the metropolitan act to the rest of the country, and it was found speedily that this did not work well. Instead of reconsidering that and making a fresh act of parliament, the course pursued has been to supply those defects as they were supposed to be found by making fresh little enactments, until the effect of it has been that there are ten acts of parliament all existing, all to be read together, all to be reconciled to each other, when, in all probability, those who drew each one of the ten acts had not given their minds to the provisions of the others. Therefore, great difficulty may arise in making out the construction of this enactment. In the present case, I confine myself only to what arises upon the case, and in this case I do not think there is any difficulty. The writ recites that a burial board had been made by the parish of Walcot, and *prima facie* the parish of Walcot would be the parish in every sense that was entitled to make a burial board. The return confines itself to this: it states explicitly that the parish of Walcot was an ancient rectory, being a parish in every sense of the word; but before the time when this burial board was appointed it had been, under the 58 Geo. 3, c. 45, divided into three sub-parishes, which were parishes for all ecclesiastical purposes. These three parishes were separate parishes in many respects, and if the original act of parliament had given the power to constitute a burial board to a parish without any definition, that would raise the question whether or not the meaning of the act was a parish for the lay purposes of the poor rates, or whether it meant a parish for ecclesiastical purposes, or was confined to a parish where they were both co-extensive. But the interpretation clause puts that out of doubt, because it is there enacted that "parish" is to mean a parish maintaining its own poor. The original parish of Walcot still remains a parish

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in that sense. It has separate officers for the poor, and separately maintains its own poor, and it is directly within the interpretation clause. Now comes the question whether any subsequent legislation has prevented this parish from having any power to do this. It has been contended—looking at the different sections of the 58 Geo. 3—that a separate parish for ecclesiastical purposes was for the purpose of burial; and a section was pointed out under which a parish may have a separate burial ground which was regarded as a churchyard. I do not think that it was pointed out that it must be separate, and also may be separate for ecclesiastical purposes without having separate churchyards. Now if the parish had required a separate burial ground, and if the case had occurred subsequent to the 23 & 24 Vict., it seems, as at present advised,—although a point may be raised,—right to say that where there is a parish or place divided into districts for ecclesiastical purposes having separate burial grounds, therefore the burial board could not be constituted without the consent of the secretary of state. But to raise that question, the return must show, as a matter of fact, that it had a separate burial ground, and that the burial board constituted for the entire parish had been constituted since the 23 & 24 Vict., and that the secretary of state had not granted his sanction. Those facts are not stated at all. The return substantially says it is impossible, when once a parish has been divided for ecclesiastical purposes, that it could be a parish having power to appoint a burial board at all. As I have already pointed out, the question under this does not arise: it seems the express words of the previous act show that is not the case. Then, under the 20 & 21 Vict., though this has not a separate burial ground, yet, under circumstances, it may obtain a burial board of its own, and procure a separate burial ground; and if it has done that, it may raise a question upon the construction of the enactment as to what is the effect of saying that the powers of the vestry of the larger district shall cease. Probably, questions may arise on that of some importance afterwards; but, as at present advised, I should agree with what has been thrown out by my lord and my brother Crompton. It is unnecessary to consider that now. In order to raise that question, it would be necessary on this return to show that, in fact, the sub-districts, or one of them, had exercised the power and had made a burial board, so that the power of the larger parish had ceased. That is a matter that ought to appear upon the return. That does not appear upon the return: therefore, I may take it that such a state of facts has not arisen. It does not arise now, and it is unnecessary to decide about it at all. All that is necessary to decide in order to decide this case is, that a parish having separate overseers, and having overseers of its own and separately maintaining its own poor, is a parish within the meaning of the act, and that there is no subsequent legislation that says, if they had

been divided for ecclesiastical purposes, not separate parishes, that it shall cease to be such.

Mellor, J.—I am of the same opinion.

Judgment for the Crown.

31 L. J., M. C. 217; 10 W. R., Q. B., p. 599.

REG. v. WALCOT ST. SWITHIN'S (OVERSEERS).

Demurrer to a return to a mandamus.

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An ecclesiastical district, part of a common law parish, may appoint a separate burial board although a board for the entire parish has been previously established.

But probably the powers of the original board in reference to the liability that attaches to the whole rates of the parish, may remain.

The parish of Walcot was divided into three separate parishes for ecclesiastical purposes, and since the passing of the 20 & 21 Vict. c. 81, a burial board had been constituted for the ecclesiastical parish of St. Saviour's, being one of the three ecclesiastical parishes into which the parish of Walcot is divided. The burial board had incurred certain expenses in the execution of their duties, which the overseers refused to pay.

The return stated that before the said burial board of St. Saviour's was constituted, it was resolved by the vestry of Walcot that a burial ground should be provided for the whole parish, and that a burial board was appointed for the parish.

To this return the prosecutors demurred.

Cockburn, C. J.—This is a case of extreme difficulty, and I come to an opinion with very great hesitation. I think the best mode of dealing with the case is to adhere to the terms which we find used by the legislature in the 5th section of 20 & 21 Vict. The question is whether a part of a common law parish, separated from the common law parish for ecclesiastical purposes, is, under the 5th section of that act of parliament, entitled to establish a burial board for itself, there being already a burial board established for the common law parish of which it is a component part. Now the section in its terms gives power to such a section of the parish to establish its own burial board, and provides that on the minor parish taking the necessary steps to exercise the powers given it by that section, then all the powers of the general vestry of the parish, and all the powers of any board already constituted, shall at once cease and determine. Now, if that stood alone, nothing could be plainer or more intelligible; but the difficulty arises in construing and giving effect to what appears to be on the face of it, the provision in the enactment and clause of that act of parliament, consistently with other very important provisions contained in the acts that are to be taken as one act with the present. The great difficulty that stands in the way of giving to that section the interpretation to which otherwise it would be entitled is, that under the powers of the former act the vestry for the general parish, of which the

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minor parish, the case of which we are now considering, is a component part, would be entitled to appoint a burial board for the entire and aggregate parish, and have a burial ground that should be common to the whole parish at large; and such burial board is entitled to borrow money for the purpose of establishing and maintaining such burial ground, and to charge the payment of the interest and principal upon the rates of the whole aggregate parish. They are to settle the proportion each of the component parts of the parish shall contribute to the rate, in case each part of the parish pays its own poor rates; so that the overseers may levy and pay out of the poor rate the necessary amount. If it is to be taken that after there has been such a general board established in a parish, and a common burial ground obtained by an expenditure of this kind charged on the rates of the parish—if, I say, it is to be taken that the powers of the general board cease and determine on the exercise by the district parish of the powers vested in it by the 5th section, it seems difficult to say how, there being this positive enactment by the legislature, they can be kept alive. This difficulty is one that presents itself when we come to consider what is the proper construction to be put on the 5th section of the 20 & 21 Vict. with which we have to deal; but as that question does not practically present itself before us to-day, it will be time enough to dispose of it when it does arise. I feel great difficulty in saying that the power of the general board could be kept alive if we give the 5th section the effect of saying, that although there should be a general board and a common burial ground once established, nevertheless the district parish can exercise the powers given to it by the 5th section. Yet, on the other hand, when we look at the proviso that is superadded to the enactment in the same section, relating to the minister's fees and with respect to burials in a common burial ground, it seems plain that the section in question does contemplate such a case as the addition of a district burial ground and district burial board, to be superadded in the case of a general burial board and general burial ground, and possibly whenever we have to deal with that question practically, it may be held that by implication the powers of the general board, although superseded and done away with with reference to the new burial ground in the new district, are yet kept alive with reference to the general liability that attaches to the whole rates of the parish. It is not necessary to deal with that question to-day, further than to have considered it when we come to see what is the proper construction to put on the clause. All I can say is, feeling that this is a most complicated and confused piece of legislation, taking all the acts together, and, since in the midst of this difficulty we have to decide one way or the other, the only course that it seems to me safe to pursue is, to adhere to the clause that we are called upon to construe, and to give a literal

effect to the terms of it. In doing that, the only conclusion we can arrive at is, that whatever may have been done by the general parish in the appointment of a general board with a view to a common burial ground does not supersede the powers given by the 5th section to a district parish in establishing for itself its own burial ground and burial board; and taking that view of it I am of opinion that our judgment must be for the Crown.

Crompton, Blackburn, and Mellor, JJ., concurred.

Judgment for the Crown.

31 L. J. M., C. 221; 10 W. R. p. 602.

REG. v. COLESHILL (OVERSEERS).

This was a special case upon a return to a *mandamus*.

The hamlet of Coleshill is part of the parish of Amersham, and is a place separately maintaining its own poor, and united for ecclesiastical purposes with the parish of Amersham, also separately maintaining its own poor, and the two places have a church and a burial-ground for their joint use, and the inhabitants of the said places have been accustomed to meet in one vestry for purposes common to such places. A vestry, or meeting in the nature of a vestry, of the said two places, *i. e.*, of the parish of Amersham, on the 31st day of October, 1857, pursuant to the Burial Acts, and with the approval of the secretary of state, appointed a burial board for the said two places, that is to say, for the said parish of Amersham. And the said burial board, with the sanction of such vestry, and the approval of the commissioners of the Treasury, borrowed money required for providing a cemetery under the Burial Acts, and charged the future poor-rates of the said parish of Amersham with the payment of such money and interest. On the burial board requiring a sum to meet the first instalment of principal money and expenses, a demand was made to the overseers of Coleshill for the portion of such sum charged in respect of the hamlet, which they refused to pay.

The return set forth a general denial of the allegations, for the purpose of testing the regularity of these proceedings.

Crompton, J.—In this case, which was argued in the course of the last term before the Lord Chief Justice, my brother Mellor, and myself, two points were made for the defendants. The first was, that the burial board for the parish, as to ecclesiastical purposes, was ill-constituted; and secondly, that the mode of taxation adopted was wrong. It was said, on the first head, that the hamlet of Coleshill was a place maintaining its own poor, and therefore, by the interpretation clause of the 15 & 16 Vict. c. 85, was a parish within that act for the purpose of having a burial board of its own. No doubt it was, by the

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provisions of that act, in the same situation as a parish ; but we think that the real question was, whether the case did not fall within the 11th section of the 18 & 19 Vict. c. 128, a statute passed to amend, and which is to be read as part of, the former act. The object of the provision in the amending statute was to enable a parish, consisting of different parts united together for ecclesiastical objects, to constitute a district for the purpose of appointing a burial board. The facts in the present case appear to us clearly to make out such community and connection as is defined in the beginning of the 11th section ; and the latter part of the section enables the vestry, or meeting in the nature of a vestry, for the whole district to appoint a burial board, and gives the whole power of the preceding enactments for providing a burial ground for the common use of such parishes or places so united, as if such parishes or places had been a parish separately maintaining its own poor. In other words, it brings the whole district into the class or category of places as defined by the 15 & 16 Vict. c. 85, and by that statute having the power to appoint a burial board for the one district by the vote of the one vestry or meeting in the nature of a vestry. Here there was an actual vestry for ecclesiastical purposes, so that there is no occasion to resort to the provision made for the cases in which a meeting in the nature of a vestry is to have the power. The burial board in question appearing to have been regularly constituted by a vote of the vestry for the whole district, we think it was well constituted under the provisions of 18 & 19 Vict. c. 128, s. 11. It should be remembered that the object and effect of these provisions is to make the whole district one body acting by one vestry for the purpose of establishing a burial board ; not to create two distinct bodies having powers by virtue of the 15 & 16 Vict. c. 85, s. 23, to concur in providing one burial board in such manner as they shall mutually agree, and to agree as to the proportion in which such parish shall be chargeable. This distinction is important with respect to the question secondly raised before us as to the mode of taxation. It was pressed upon us principally that the 11th section of the 18 & 19 Vict. c. 128, must be read with reference to the 23rd section of the 15 & 16 Vict. c. 85, and therefore that the board ought to have fixed one definite proportion in the contract for the amount to which each of the two places was to be chargeable in future, and which was never to be changed. We do not concur in this view of the enactment. The provisions in the 23rd section of the 15 & 16 Vict. c. 85, are applicable, when the two parishes or places maintaining their own poor, acting by their two vestries, are to consider whether they will have a joint burial board or not, and they are therefore properly directed to consider in what manner, not inconsistent with the act of burial, any shall be provided, and in what proportions they shall each be chargeable—a most important element for their considera-

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tion of the question whether they shall have it or not. They are each to appoint a burial board, who are to act together as a joint burial board, and to be incorporated by the name of "*the* burial board for the parishes of," whilst the ordinary burial board is to be incorporated by the name of "*the* burial board for the parish of." It seems to us that the effect of the 11th section of the 18 & 19 Vict. c. 123, is to bring the case within the class of cases by which a parish, as defined by the 15 & 16 Vict. c. 85, is to form a district by itself, and not within the class referred to in the 23rd section of that act, where two or more parishes are to agree. The powers are to be exercised by one body, not by two bodies agreeing, before the constitution of the board, on what terms and in what proportions they shall unite. The 11th section of the latter act expressly says that the inhabitants are to act by the one vestry or meeting in the nature of a vestry, and are to be in the same situation as if the district constituted one parish "separately maintaining its own poor." In effect, that they are to fall within the class of cases in which a parish is, by the definition "every place maintaining its own poor," to be a body to constitute by one vestry one burial board, and not within the class contemplated in the 23rd section of the 15 & 16 Vict. c. 85, by which the two parishes are kept distinct, and elect two separate boards, who are to act jointly. Under the 23rd section the proportion was clearly to remain the same as between the parishes, but that does not appear to have been contemplated by the 11th section of the latter Act, which gives directions as to the apportioning the expenses with reference to the rateable value of the property. There is not to be one proportion fixed for ever according to the agreement of the parties, but the expenses are to be borne by the several parishes or places, and shall be apportioned amongst them by the board in proportion to the value of the property in such several parishes or places, and rated to the relief of the poor. This, we think, may well be construed to mean that the proportion shall be according to the rateable value from time to time when it may become necessary to raise the rates, and this seems to us the more natural construction, than to hold that the rateable value at the establishment of the board is to be binding for ever. The proportion is to depend on the value as rated to the relief of the poor, and it can hardly mean that for all future time the rates for the year of the establishing of the board are to be referred to. It certainly seems a much more reasonable provision that the burden should follow the rateable value from time to time, as the words seem to import. It appears to be more just that the places should contribute as the population varies, and the rateable value falls and rises; and this is in effect the same provision that is made for the common case of one parish by the earlier clauses of the act. The act saying that the burial board, as we think, from time to time are to apportion the expenses to be borne by the two

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places in proportion to the value of the property in each as rated to the relief of the poor, the mode adopted seems to us to be right, as the board has so apportioned the necessary sum, and then the machinery of the earlier act, as to giving the certificate and requiring the overseers to pay the money, seems to apply. It was said, indeed, that there were to be two modes of taxation, and that the sums to meet the expenses of providing or buying a burial ground, and of paying the mortgage moneys, though falling upon the rates, were to be raised in a different manner from the ordinary expenses of maintaining, &c., the burial ground. We see, however, no distinct machinery given for this purpose; and we do not see why all the expenses, whether to meet the necessary expenditure for maintaining the burial ground, or for the purpose of meeting the interest on money borrowed, should not be raised by one tax; a much more convenient course than if two distinct taxations were to be necessary every year, the one for ordinary and the other for extraordinary expenditure, where both are alike to be paid out of the rates. Another objection was made, that the mortgage-deed was defective in charging the sum borrowed upon the future rates of the one part of the parish, and also upon the future rates of the other part of the parish. If the view we have taken be correct, that the expenses are to be defrayed from the rates of the two places in proportion to the rateable property in each from time to time, this would seem correct, as it must be construed to mean, and its legal effect would be, to charge it on the rates of the parishes in the proportion to be ascertained from time to time according to the rateable value of the property in each. Upon the whole we are disposed to think that the constitution of the board and the mode of taxation adopted in this case, carry out, in the way that seems most feasible, the object of the provisions of the act. But we cannot help observing that it is impossible to come to anything like a decision which is perfectly satisfactory to our own minds, amidst such confusion as exists in the provisions of the different Burial Acts which have been referred to in the course of the argument. For the reasons we have given our judgment is for the Crown.—*Judgment for the Crown.*

31 L. J., Q. B. 219; 7 L. T. (N. S.) Q. B. 246.

FOSTER v. DODD.

Q. B., 24th April, 1866.

Right of Freeholder in closed unconsecrated Burial Ground.

20 & 21 Vict. c. 81, s. 23; & 22 Vict. c. 1, s. 1.

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Blackburn, J.—The question is, what is the limit to the power of her Majesty in Privy Council conferred by that enact-

ment? She may direct acts to be done by the churchwardens, or such other persons as may have the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health. The argument for the defendants must go the length, and Mr. Bovill did not shrink from so conceding, that, if a place had once been used for the purpose of burials, it would continue such for the purpose of giving jurisdiction to her Majesty under this section. So that, to take the case of the Pest Fields, in the parish of Marylebone, where numbers of persons who died in London of the great plague were buried, and upon which at the beginning of the present century, or very shortly before, houses and squares were built and formed, and have since been occupied, if that argument is good, the secretary of state would have jurisdiction under this section to order those houses to be pulled down and the ground to be covered, as he has directed in the present case. The question is, are such cases as that within the enactment? We cannot give such an extensive scope to it as that. I think that the effect of the enactment is to give power to the secretary of state to order such acts to be done by the churchwardens or other persons who have the care of vaults or places of burial, as places of burial at the time of the passing of the act. It is not necessary now to determine whether they must have the care of them at the time of making the order in council; but they must have had the care of them as places of burial in 1857, when the act passed. If at that time a place had been dedicated as a place of burial, *e. g.*, a parochial burial ground or ground in the hands of trustees for that purpose, or if the owner had so dedicated it, the enactment would apply. At all events there should have been persons who had the care of such places as places of burial, and which had not ceased to be burial places before the year 1857. Taking that view of the construction of the statute, the place in question had ceased to be a burial place before the year 1857, according to the facts stated in the case. It is unnecessary therefore to make any distinction between the two pieces of ground. After the expiration of the leases in 1844 there is nothing to show the slightest intention on the part of any one to continue the place as a burial ground. There is nothing on the part of Lord De la Warr, the freeholder, to show any intention to dedicate it to that purpose. At common law there is nothing to prevent the owners from using the property in the manner proposed, provided nothing is done to injure the public health, or indecently to expose or remove the bodies of the dead. It was further contended that the supplemental act, 22 Vict. c. 1, s. 1, gave power to the Secretary of State to direct the churchwardens to do the acts mentioned in the order where the persons having the care of the ground omit to do them. That however does not apply where the order itself is invalid, as it is in this case, for, in my judgment, this was not a place of which the plaintiff had

FOSTER v.
DONO.

The 20 & 21
Vict. c. 81,
s. 23, does
not apply to
a burial
ground not
consecrated
or dedicated
by deed
which had
ceased to be
used for
burial prior
to the pass-
ing of the
act 22 Vict.
c. 1.

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the care as a place of burial, but it had ceased to be so before the passing of the act. The judgment will therefore be for the plaintiff.

Shee, J.—I am of the same opinion. The defendants are sued as trespassers, and they are so unless they are justified under the Act of Parliament. The land was held up to 1844 under long leases by the Governors of Bridewell Hospital. After that they became tenants to plaintiffs from year to year, and when it suited them they gave up possession to Lord De la Warr, the freeholder, who then granted a lease of it for ninety-nine years to Soward, who entered upon the land and made alterations upon it, and in 1859 underleased to the plaintiff, who took possession and covered the land with timber and other things, with the intention of erecting workshops upon it, and appropriating it to an entirely different purpose. The freeholder was released from obligation as to preserving the ground for any other purpose than burials, and there is nothing to show that he was in any way precluded from dealing with the land in the same way as any other land. That being so, the question then is, had the Secretary of State power, under the 20 & 21 Vict. c. 81, s. 23, and the 22 Vict. c. 1, s. 1, to issue the orders relied upon by the defendants as their justification. The real question is, what is the meaning of sect. 23? In my judgment it only applies to vaults and places of burial which were at the time of the passing of the act in the care of churchwardens or other persons for the purposes of places of burial, and so appropriated. At that time the land in question was not in the care of any one for the purpose of a place of burial; it was in the possession of the owner as his land, and therefore it does not come within the words of the section. It follows that the Secretary of State's orders were not properly made; that they exceed the powers conferred by the act, and consequently the defendants were trespassers.

Lush, J.—I am also of opinion that the orders of the Secretary of State are in excess of the act, and therefore void, and do not justify the defendants in carrying them out. The land used for the purpose of burials by the Governors of Bridewell Hospital was only leased to them. Burials ceased on the land in 1844, and there is no evidence of any intention to bury there again. Sect. 23 only applies to places of burial, which may in one sense be called public burial-places by consecration, trust, or appropriation in perpetuity, and not to land like this in the hands of the owner.

Judgment for the Plaintiff.

14 L. T. (N. S.) 333; Law Rep. 1 Q. B. 475; 17 L. T. 616; Law Rep. 3 Ex. Ch. 67.

Ex parte THE RECTOR OF LIVERPOOL.

4th November, 1870.

Claims by Rector, Churchwardens, and Vestry.

V.-C. Malins.—It appears that this burial ground was constituted by an act of Will. III., and used as such down to 1854, when it was closed by an order in council; since then there have been no burials there. In 1864 the corporation of Liverpool were empowered by their Improvement Act to take part of this land, and the usual notice to treat was served upon the patron, the ordinary, and the rector. The question of the amount of the purchase-money was settled by arbitration, but ultimately the completion of the purchase was resisted by the corporation. A bill was filed to compel specific performance: the case was argued before me in February last, and I ordered the corporation to pay the purchase-money into court, together with a further sum for arrears of interest. It is this fund concerning which the present question arises. There is no doubt that since 1854 the rector has not had any profits from this land, and has virtually ceased to have any interest in it. Nor is it likely that he will receive any future profits, unless (which is very improbable) the ground is reopened for burials under an order in council. If, therefore, the rector gets the dividends on this fund it will be a windfall; but on general public principles the rector has, in my opinion, the best claim. The churchwardens and vestry never had any interest in this land, and they have none now; indeed, if it were re-opened for burials, they would be losers by the change, for burials would be withdrawn from the present burial-ground. I have, therefore, no difficulty in deciding against them. The only other claimant is the rector, in whom the freehold is vested by law. There are, no doubt, restrictions upon his rights as freeholder, which will be found stated in Mr. Cripps's able treatise; but, subject to these well-known restrictions, he remains the freeholder. The order in council of 1854 made no change in this, and he continued to be entitled to the profits arising from this land. It is not likely that the order will be revoked, and, therefore, it is not likely that the land will ever become very profitable. But whatever profits may arise, there is but one person entitled to them, and that is the rector. Such are my views, independently of authority; but I find that the matter has been considered before, and I can see no distinction in substance between the present case and the case of the St. Pancras Burial Ground. There part of a burial ground, which had been closed by an order in council, was taken by a railway company, and the purchase-money paid into court; and Wood, V.-C., made an order directing payment of the income to the church trustees, a body entitled by statute to the profits of the

Ex parte
THE RECTOR
OF LIVER-
POOL.

Freehold of closed burial ground (dedicated by statute, Will. III.) being in the rector, he alone is entitled to dividends on purchase-money when subsequently taken for a public improvement.

Ex parte
THE RECTOR
OF LIVER-
POOL.

ground. As to the parish clerk and sexton, they may have had an interest in the number of the burial-fees, but none whatsoever in the soil. But it is the soil which is represented by this fund, so that they can have no claim. I shall, therefore make an order for payment of the sum in court which represents past interest to the executors of the late rector, and for the investment of the residue of the fund and payment of the dividends to the present rector and his successors, until further order. The costs of the petitioners must be paid by the corporation, and those of Mr. Millar's and Mr. Robinson's clients will come out of the fund.

23 L.T. (N.S.) 354; Law Rep., 11 Eq, 15.

Ex parte RECTOR OF ST. MARTIN'S,
BIRMINGHAM.

18th November, 1870.

Claims by Rector and Inhabitants.

Ex parte
RECTOR OF
ST. MARTIN'S,
BIRMING-
HAM.

Freehold of
burial
ground
(provided
under act
of Geo. 3),
taken for a
railway—
being in the
rector, he is
entitled to
to the divi-
dends.

V.-C. Malins.—This is a question concerning the Park-street Burial-ground, in the parish of St. Martin, Birmingham. In 1807 the original churchyard of that parish had become insufficient, and accordingly the act 47 G. III., c. 15, was passed to enlarge the churchyard, and, should not that suffice for the wants of the parish, to provide an additional burial-ground. The only important parts of the act for the purpose of this question are the preamble and sect. 11. [His Honour read them both.] Under the act, therefore, land was to be acquired by rates, and was to be conveyed to the rector and churchwardens “in trust for the inhabitants of the parish.” Now the construction which I place upon those words is this: that the land was to be devoted to the use of the inhabitants as a burial-ground, and the rector and churchwardens were to hold the land as a burial-ground for the parish. The act is silent as to burial fees or the profits of the ground. I must, therefore, inquire what evidence there is before me as to the mode in which the burial fees were dealt with. I find that, in or about the year 1809, land was acquired in Park-street for an additional burial-ground by the trustees appointed under the act. I find also that from 1809 to 1849, a period of forty years, the fees on burials in the Park-street Burial-ground were paid to the rector of the parish of St. Martin. In 1849, the London and North Western Railway Company, under the powers of their acts, took a part of this burial-ground, and paid the compensation money into court. Shadwell, V.-C., ordered the money to be invested and the dividends paid to the rector and churchwardens, to be applied by them for the purposes of the act, 47 Geo. III., c. 15. But the act specifying no purposes for which the

money could be applied, the dividends have been accumulated, and I have now to decide who is entitled to them. It is quite clear that, whatever other rights the parishioners had in this burial-ground, they had no pecuniary interest in it: the only pecuniary interest that existed belonged to the rector. A short time ago I had before me the case of *Ex parte The Rector of Liverpool*. There a burial-ground was closed in 1854, and part was taken by a corporation in 1866. The same question arose as to who was entitled to the dividends on the purchase-money, and I decided in favour of the rector. If there is a difference between the two cases, it seems to me that the circumstances here are more favourable to the rector's claim. For in that case the ground had been closed, and the rector had received nothing for twelve years, when the land was taken by the corporation; but here the rector was in actual receipt of the burial fees in 1849. But it is urged that in the Liverpool case the freehold of the burial-ground was in the rector, whereas it is here in the rector and churchwardens. The main ground, however, of my decision in the Liverpool case was that the rector had received the burial fees, and of that ground I can avail myself in the present case. Again it is said that in this case the burial-ground was originally purchased with the money of the parishioners. But if I am to return the money to those who originally paid it, I should have to seek out the representatives of those who contributed to the rates in 1807. And if it be suggested that on this ground I ought to order the money to be applied to parish purposes, I answer that had the railway company not taken the land, the profits arising from it would not have been applied to parish purposes. The rector would have continued in receipt of the burial fees until 1857, when the ground was closed; and the action of the railway company can give the parishioners no new rights. If, however, further authority be considered necessary, it is supplied by *Re St. Pancras Burial Ground*, Law Rep., 3 Eq., 173; which covers this case so far as it is not covered by my decision in *Ex parte The Rector of Liverpool*. In the *St. Pancras* case the freehold of the burial-ground was vested in the vicar and the churchwardens for the use of the parish, and the burial fees were received by the church trustees; and Wood, V.-C., ordered the dividends to be paid to the church trustees. I find, therefore, that both in the case of *The Rector of Liverpool* and of *The St. Pancras Burial Ground* the dividends were ordered to be paid to the persons who had received the burial fees. I find that in this case fees were paid for burials for forty years, and that all those fees were received by the rector. And on these grounds I decide that the rector is entitled to the dividends on the funds in court.

Ex parte
RECTOR OF
ST. MARTIN'S
BIRMINGHAM.

ROCHESTER BURIAL BOARD v. THOMPSON.

C. P., 31st May, 1871.

Rights of Sexton.

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The parish sexton has a right to enter cemetery provided under the Burial Acts, and dig graves; also to toll the bell, and may appoint a deputy to perform such work.

Willis, J.—It is unnecessary in delivering judgment in this case to refer to the pleadings, because I take it that this is a case in which a parishioner was lying dead and requiring burial, and such being the case it was necessary that somebody should dig a grave and prepare for the burial of the parishioner according to the usages of the Church, and thereupon the sexton appointed a man to prepare a grave and ring the bell, and the person so appointed was absolutely forbidden by the Burial Board to do these acts, on the ground that it thought proper to do the acts itself, and did not intend that the sexton should do them. The defendant, being the person sent by the sexton, insisted on doing these acts by order of the sexton at a reasonable time and place, and under circumstances under which the sexton had the right to do the particular acts complained of if the burial had been going to take place in the old parish burial ground, in which case the rector of the parish would have had no reason for forbidding the sexton to do the acts in question; so that, in the ordinary course of things, but for the Burial Acts, which have substituted the cemetery for the churchyard, the sexton would unquestionably have been the man to dig the grave and toll the bell. The questions raised therefore are these: first, whether the board has right to do these acts itself, and forbid the sexton to do them; and, secondly, assuming that question to be answered in the negative, whether the sexton has a right to appoint a deputy to do the work for him. For the purposes of the case, I assume that the sexton does not claim to be entitled to come at an unreasonable time, and I think it is no doubt competent to the board to fix reasonable hours for the sexton to do his work. We are not now dealing with a case analogous to one in which the sexton selects a place for the grave which the rector thinks unreasonable, but I assume that here the place chosen for the grave was one in which a person would ordinarily be buried, and either that the board had pointed it out as the proper place, or else that the board had absolutely refused to point out any place, so as to leave it to the sexton to select a reasonable place. Nor do I enter on the supposition that the sexton selected some grossly improper person to do the work; such a thing is unlikely to occur, and if it did, the board might interfere to prevent it. I now come to consider what I have spoken of as the first question raised, viz., whether the board has a right to do these acts itself, and forbid the sexton to do them. At the time of the passing of 16 & 17 Vict. c. 134. extending the provisions of 15 & 16 Vict. c. 85 to places beyond the limits of the metropolis, the law appears to

have been clear enough. In respect of parishioners lying dead, there was a right in them, or their representative, or the public, to have the body disposed of; whether in respect of a private right or out of consideration for public decency, or in respect of the usages of religion, the law provided that the dead body should be buried, and, in the case of the deceased having been a Christian, the burial ought to take place in the churchyard, and the ordinary burial service ought to be performed. There were several officers to conduct those proceedings. There was the clergyman, whose duty it was to perform the service. He had also the freehold of the churchyard, and, as the freeholder, might exercise a control over the selection of the place for the grave. He had also the appointment of the sexton and the right to discharge him upon proper grounds. It was the duty of the sexton to dig the grave, and he was not ordinarily interfered with by the rector in doing so, but was allowed to exercise his functions in respect of the performance of which he was entitled to receive fees. Whilst matters stood thus, no difficulty could ordinarily arise. The sexton had thus a clear right, recognised by the rector, to perform the duties in respect of which he received payment. Cases arose from time to time in which the rector interfered with the sexton's performance of his duties; but the sexton had his remedy, and the courts would grant a *mandamus* to compel the rector to allow the sexton to perform his duties. In this state of things, 16 & 17 Vict. c. 134 was passed, and the legislature, in passing that act, did not intend to deal with the exceptional case of a rector wrongfully interfering with the sexton, but meant only to deal with ordinary cases of rector and sexton. Instead of giving to either compensation in respect of the formation of the cemetery, as was done in the older statutes, the legislature gave to each the right to perform his duty in the cemetery, and the right to receive his fee in respect of such performance. That is clear from the 32nd section of 15 & 16 Vict. c. 85, made applicable to the present case by sect. 7 of 16 & 17 Vict. c. 134. It first speaks of the incumbent or minister, who is not only entitled to perform the service in the cemetery, but has the duty of doing so imposed upon him. He has to perform the religious service the same as before, and to accompany it by the same ceremonies and usages as in the old parish churchyard. One would expect from that some provision as to the person to dig the grave and do the other ministerial acts requisite to a funeral. We accordingly find that provided for in the next part of the section: "And the clerk and sexton of such parish . . . shall (when necessary) perform and exercise the same duties and functions in respect of the burial of the remains of parishioners or inhabitants of the parish of which he is clerk or sexton in such burial-ground, or the consecrated portion thereof, and shall be entitled to receive the same fees on such burials, as he had previously performed, exercised and received, as if such burial-ground

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were the burial-ground of the respective parish of such incumbent or minister, clerk, and sexton respectively." Now, what is the meaning of this provision? I am far from reading the expression "when necessary," introduced in the part of the section relating to the clerk and sexton, as distinguishing him from the incumbent, who, under the earlier part of the section, has the right to perform the burial service, or from the parishioners, who, under the latter part of the section, have the right to be buried. I read them as referable to the rights of the clerk and sexton. They have reference not only to the right to dig the grave, but also to the private right of each parishioner to be buried and have the burial performed in the usual way. They refer, not only to the necessity arising from the deference to be paid to public health and public decency, that a dead body should be hurried, but also to the individual right of the parishioners to have their bodies dealt with in the same way as in the old churchyard. and they refer to the necessity which arises from the propriety and duty of performing the funeral service in the ordinary way. That, I take it, is the meaning of the section; and the right of the board over the ground being subject to the provisions of the statute, the rule of law applies that, if in a statute you find a general provision applicable to a great many matters and also a special provision applicable to one particular subject-matter, the latter must override the former, although the language of the general provision is such that it is capable of being applied to the subject-matter of the special provision. That being so, and it having been one of the duties or functions of the sexton to dig the grave in the old burial-ground of the parish, it follows that *quod* sexton, he has a right to dig the grave in the cemetery. Now comes the question, whether he has a right to toll the bell. That raises a different question. There is no express provision to say that he shall toll the bell of the cemetery, and it is contended that he still has the right to toll the bell of the parish church, but no other. The question is, whether, reading sect. 30 in connection with sect. 32, we ought not to consider a bell put up in a chapel built under the former section as subject to the same control of the proper parochial officer as the bell of the parish church itself. As to the latter bell, no difficulty arises, as it was laid down in very early times that the parishioners were bound to find bells for the parish church, and many questions have arisen, both in the common law and ecclesiastical courts, as to the use of the bells. It would be a waste of time to refer to authorities on this subject; but I may mention that, as early as 1 Hen. IV., we find a case in the year-books on the subject, and the result is that, though the rector has a general control over the church, he could not interfere with the bells to the disadvantage of the parish. The ecclesiastical law, recognised on this point by the common law, is in accordance with the 67th canon, which shows that "when any

is passing out of this life a bell shall be tolled, and the minister shall not then slack to do his duty. And after the party's death, if it so fall out, there shall be rung no more than one short peal, and one other before the burial, and one after the burial." In 1 Burn's Eccles. Law, by Phillimore, 135, there is an *obiter dictum* of Sir William Wynne, in *Pearce, &c., v. Rector of Clapham* (3 Hag. 16), that "a ring of bells cannot be provided for without expense, as for ropes, tuning, &c. Suppose at one time the parishioners are willing to take upon themselves such expenses and at another time refuse, the ordinary could not compel the parishioners to keep the bells in order, because they are in the steeple. *There must be a bell to ring to church and toll at funerals; but that is all.*" That is high authority to show that the tolling of the bell at a funeral is an ordinary and necessary part of a funeral. That being so in the parish church, what is to be done in a cemetery? The 30th section provides that a chapel is to be built on a plan to be approved of by the bishop. I think it is obvious, reading this section in connection with sect. 32, that, as the incumbent is authorised by the latter section to perform the duties and have the same rights in the cemetery as he had in the old parish church, he has a right to perform the service in the chapel, if a chapel has been built, and it follows that he has a right, and is bound to perform the service according to the rites of the church, and a chapel erected under sect. 30 was substituted, so far as the performance of the funeral service is concerned, for the old parish church. I am, therefore, unable to draw any distinction between what is necessary for the mere disposing of the body and what is necessary for the proper performance of the prescribed ceremony. Before leaving this part of the case, it is right that I should refer to one argument of Sir J. Karlake's. He said that the right of the sexton was subject to the right of the minister, who might forbid him to toll the bell. The minister might no doubt, under some circumstances, (as, for instance, if the church were situate close to the house of a person dangerously ill), forbid the tolling of the bell, though we know the difficulty involved in such a proceeding. The question, however, now arises, whether the burial board is placed in the position of the minister, so as to determine whether canon 62 shall be obeyed or not. I think that, if there is any reservation of power in that respect, it would remain in the minister, and would not be transferred to the burial board. It is said that the minister might forbid the burial, but the act only purported to deal with matters of ordinary occurrence; and I think that, unless some special circumstance of unreasonableness can be set up by the board, either in respect of the place or time selected or the deputy appointed, the 32nd section gives the sexton the same right in the cemetery as against the burial board as he had in the churchyard as against the minister, and the sexton would, ordinarily, under the

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circumstances before us, have the right both to dig the grave and toll the bell. I now come to the only other question raised, viz. whether, assuming the sexton to have the right himself, he was justified in appointing a fit and proper person to do the work for him. It is said that the maxim, *delegatus non potest delegare*, applies; but I think that, as to matters purely ministerial, such as digging a grave or tolling a bell, a sexton might well appoint a deputy. It is obvious that, in a season of great mortality, it would be impossible for him to do all the work himself, so that to hold that he cannot appoint a deputy appears highly unreasonable.

Keating, J.—I am of the same opinion. We must take it on the pleadings that the defendant, as servant of the sexton, went to the cemetery for the purpose of doing the acts complained of under circumstances which, if the old parish churchyard still existed, would have justified and authorised him in digging in the churchyard, because it is stated that he entered at a reasonable time, and in a reasonable place and manner. The question now arises whether the burial board has a right to prevent him from discharging these functions, on the simple ground that the board is ready to perform them itself. I am clearly of opinion that the board had no such right, and in looking at the purview of the statute, I am surprised that the question could have been raised. The object of the statute was to preserve the old state of things under new circumstances, on the substitution of the consecrated cemetery for the old churchyard, and, looking at the control to be exercised by the bishop and other matters in the act, I am satisfied that it was intended as much as possible to preserve the old state of things. As to the clerk and sexton, I am at a loss to see how words more distinct could be employed than the words of the 32nd section. It is contended that the words “when necessary” mean when there is no one else to do it. I think, however, that that is a strained interpretation, and that the words simply mean “when the necessity arises” or “when the occasion occurs.” The section goes on to say that the clerk and sexton shall “perform and exercise the same duties and functions in respect to the burial of the remains of parishioners or inhabitants of the parish . . . and be entitled to receive the same fees . . . as he had previously performed, exercised, and received.” I should be at a loss to suggest words which more completely express the intention of the legislature as I have stated it. That being so, the argument of the burial board amounts to this: that the statute having imposed upon the sexton the obligation to dig the graves and given him the right to receive fees upon so doing, nevertheless intended to relieve him of his duties, if the burial board chose to provide servants of its own to do the work. I think that a very strange view to take of the intention of the legislature. For myself, it is only my opinion, I exceedingly doubt how far the board would be

justified in throwing upon the rates the expense of providing persons to do work which the legislature has expressly provided shall be done by the clerk and sexton. It is not necessary to decide this point ; but that is my opinion. Under this section there is a clear right and duty in the sexton to perform the functions which he had in the old parish church. That being so, I think these pleas give a good answer to the action. Nor is there any distinction as to tolling the bell. I quite agree with my brother Willes as to the effect of sect. 30. The plan of the chapel to be erected is to be approved by the bishop, who would not consecrate it unless it was a proper building for the purpose for which it was built. The legislature incaut to make provision that the chapel should be on the same footing as the old parish church. As to the sexton having deputed the defendant to do the work for him, I quite agree in thinking he could clearly delegate his authority, the defendant being a fit and proper person to do the work.

M. Smith, J.—I am of the same opinion. What the burial board is really contending for is, the power to exclude the sexton from the ground and from the performance of his functions there, provided that the board was willing to perform the duties of sexton itself. I think that such an attempt is in violation of the plain intention of the legislature. The scheme of this legislation which empowered the burial board to have the ground consecrated as a cemetery, was to substitute the burial ground for the old churchyard, and to place the newly-consecrated chapel, as nearly as possible, so far as the performance of religious rites was concerned, in the same position as the old parish church. As to the sexton he was an officer with important duties to perform ; his duty lay in the burial ground, and it was one in the performance of which the parishioners were interested, and the performance of which gave him a right to receive fees. It is contended on behalf of the burial board, that the sexton had no duties to perform in the cemetery, if the board itself was willing to provide for the performance of the duties which he would have otherwise had to perform. The words “when necessary,” which are relied on for this purpose, mean in my opinion simply, “when the occasion shall arise.” Reliance has been placed by the board on the 38th section ; but by that clause the management, regulation, and control are vested in the board, only “subject to the provisions of this act.” One of the provisions of the Act preserves to the sexton his old duties and rights. No doubt the board has a general control, and, as already observed by my learned brothers, it was the duty of the sexton to conform to any reasonable rule that might be laid down by the board as to the time at which, and the place where he was to perform his duties. If the board laid down no rules on these points, but still insisted on excluding the sexton, then the question which arises here, viz., what means

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the sexton had to enforce his rights. It is said that he has no right to enter without the consent of the board, just as he would not have had the right to enter the churchyard against the order of the rector. It may be that the rector, who is freeholder of the churchyard as well as rector of the parish, might have the power to determine when and where a grave should be dug, and might at certain times exclude the sexton from the churchyard. The rector is limited by the act to the performance of the religious duties. The sexton is also mentioned in the act. The parishioners are also interested in the performance of his duties. If the board forbade him to bury, it would still be the duty of the sexton to bury, and it would be monstrous if he could not enter for this purpose and were left to take proceedings at law to enforce his right to be admitted, and to do all that was necessary for the purpose of burial. As to the tolling of the bell, I will add nothing to what has fallen from my learned brothers. Tolling the bell was one of the functions of the sexton before the act, and it is not only proper but necessary for the burial board to provide a bell for the performance of the Church of England services, and the bell having been provided by the board, I think the sexton has the same right to toll it as he has to dig the grave. Subject to the qualifications pointed out by my brother Willes, I think the sexton has the rights asserted in the pleas, and that those pleas are not answered by the replication that the defendant did the acts complained of without the consent of the board.

24 L. T. (N. S.) 673 ; Law Rep. 6 ; C. P. 445.

CRONSHAW v. WIGAN BURIAL BOARD.

Ex. Ch. Special Case on Appeal.

CRONSHAW
v.
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BURIAL
BOARD.

Right of
district in-
cumbent of
"new
parish" to
burial fees
in cemetery
subsequent-
ly provided
by burial
board for
the entire
parish.

This was a special case, stated in an action by the incumbent of the church of St. Thomas, Wigan, for the recovery of fees claimed to be payable by the Wigan Burial Board to the plaintiff for burials in the burial ground provided by the defendants for the borough and township of Wigan, between 11th Sept., 1869, and 23rd March, 1870. The Court of Queen's Bench (Cockburn, C. J., Mellor, Lush, and Hannen, JJ.) gave judgment on 11th November, 1871, in favour of the plaintiff. The case in the court below is reported 25 L. T. Rep., N. S. 536.

Kelly, C. B.—We are all of opinion that this judgment should be affirmed. Under the provisions of the statutes 58 Geo. III. c. 45, and 59 Geo. III. c. 134, a district had been created and a church built, and various provisions made, and acts done by means of an order in council, which, among other things, provides for the publication of bans of matrimony and

the solemnization of marriage, churchings, and baptisms, and which confers upon the minister of St. Thomas a right to the fees upon the publication and performance of these offices. The matter remained in this state until the passing of the 19 & 20 Vict. c. 104, on the 29th July, 1856. The real and single question which arises in this case, important as it is, is whether the 14th section of the said statute, of the 19 & 20 Vict. c. 104, applies to the present case. We are all of opinion that it does apply. I have already observed that under the 59 Geo. III. c. 134, and the order in council which was made pursuant to the provisions of that act, the minister of this district church was entitled to publish and perform banns of matrimony, marriages, churchings, and baptisms; he was likewise clearly entitled to the fees arising in respect of these publications and performances. When we come to the 14th section of 19 & 20 Vict. c. 104, the question arises whether reading that section according to its literal language, or with reference to the undoubted objects of the legislature in passing that act of Parliament, if any real question can arise, this case does not come strictly within its provisions. It provides, "Whosoever banns of matrimony and the solemnization of marriages, churchings, and baptisms are authorised to be published and performed, in any consecrated church to which a district shall belong, and the incumbent of which is by such authority entitled to the entire fees arising from the performance of such offices, such district shall become a separate and distinct parish for ecclesiastical purposes." In this case there was a consecrated church and a district, brought into existence under the provisions of 58 Geo. III. c. 45, and 59 Geo. III. c. 134, such district not being at the time of the passing of Lord Blandford's Act a separate and distinct parish for ecclesiastical purposes, and the incumbent of which, under the authority of the order in council, was entitled for his own benefit to the entire fees arising from the publication and performance of banns of matrimony, marriages, churchings, and baptisms. Now the object of the legislature was to give to the provisions of this act a general—I might almost say a universal—operation; and when we find that the language strictly and literally, as well as substantially, applies to St. Thomas's, I am unable to see why it is to be excepted out of the operation of this clause when it comes strictly within its terms. It became at that time a separate and distinct parish for ecclesiastical purposes. Now let us see the further operation upon the case before us of the provisions of 20 & 21 Vict. c. 81, s. 5. I need not go through the other clauses of this act of Parliament. We find in it a provision in these terms, "Until a burial ground shall be provided for any new parish, created pursuant to 19 & 20 Vict. c. 104, the incumbent of such new parish shall perform the same duties and be entitled to the same fees in respect of the burials of the remains of the parishioners of such new parish

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in any burial ground provided under the burial acts, to which such new parish shall have contributed, as if the said burial ground were exclusively the burial ground of such new parish. reserving, however, the rights of existing incurabents." Now this provision strictly and literally applies to the present case, and is sufficient of itself to entitle the plaintiff to the judgment which he claims. I might refer further to the objects of the legislature in passing Lord Blandford's Act, but any further reference to that act of Parliament and the object of the legislature is altogether superfluous, when we remember that this question came before the late Dr. Lushington in the case of St. Mary's, Shrewsbury (*Gough v. Jones*, 9 Jur., N. S. 82), and he then, under similar circumstances, held that the provision of Lord Blandford's Act applied. I may observe, with reference to the several cases cited by Mr. Bristow, that they were all determined upon the particular circumstances of each case, and in none of them was there any direct construction put upon this clause of Lord Blandford's Act. Upon these grounds, without going further into the arguments, we are all of opinion that the judgment of the Court of Queen's Bench should be affirmed.

Martin, B., Keating, J., Pigott, B., Brett, J., Cleasby, B., and Grove, J., concurred.

Judgment for Plaintiff affirmed.

28 L. T. N. S. 283.

FORMS.

No. 1.

Requisition for Meeting to determine whether a Burial Ground shall be provided.

15 & 16 Vict. c. 85, ss. x. xi., and 16 & 17 Vict. c. 134,
s. vii.

To the churchwardens [or others] of the parish of
in the county of .

REQUISITION
FOR
MEETING.

We, the undersigned ratepayers of the before-mentioned parish, being of opinion that the place of burial belonging to [description of ground or grounds] within such parish [is or are insufficient, or dangerous to health], do hereby authorise and require you forthwith to convene a meeting of the vestry of the said parish, for the special purpose of determining whether a burial ground shall be provided for such parish, under the provisions of the acts 15 & 16 Vict. c. 85, and 16 & 17 Vict. c. 134. [And if it be resolved by the vestry that such burial ground shall be provided, to appoint not less than three nor more than nine persons, being ratepayers of the parish, to be the burial board of such parish.]

} Ratepayers of the
said parish [not
less than ten].

No. 2.

Notice of Meeting.

15 & 16 Vict. c. 85, ss. x. xi. ; 16 & 17 Vict. c. 134, s.
vii. [18 & 19 Vict. c. 128, s. iii.] ; and 20 & 21 Vict.
c. 81, ss. xviii.-xxi.

*To be affixed to the church doors at least seven days (Sunday)
being the first) prior to the meeting.*

Parish of , in the county of .

We hereby convene a meeting of the vestry of this parish,
to be held at , within the said parish, at

NOTICE OF
MEETING.

NOTICE OF
MEETING.

o'clock in the of the day of
next, [in pursuance of a requisition, signed by ten or more of
the ratepayers thereof requiring us to convene a meeting of
the vestry,] for the purpose of determining whether a burial
ground shall be provided for the said parish, under the
provisions of the acts 15 & 16 Vict. c. 85, 16 & 17 Vict.
c. 134, [18 & 19 Vict. c. 128,] and 20 & 21 Vict. c. 81.
[And if it be resolved by the vestry that such burial ground
shall be provided, to appoint not less than three nor more than
nine persons, being ratepayers of the parish, to be the burial
board of such parish.]

} Churchwardens [or others
to whom it belongs to
convene meetings of the
vestry] of the parish of

No. 3.

Resolution to provide a Burial Ground.

15 & 16 Vict. c. 85, ss. x. xi. ; 16 & 17 Vict. c. 134, s. vii. ;
and 20 & 21 Vict. c. 81, ss. xviii.—xxi.

RESOLUTION
FOR BURIAL
GROUND.

At a meeting of the vestry of the parish of , in the
county of , duly convened for the special purpose of
determining whether a burial ground shall be provided for the
said parish, under the Burials (beyond the Metropolis) Act, and
held at , this day of , 18 ,

It is resolved by the said vestry,

That a [new or additional] burial ground shall be provided
for the said parish, under the said Burials (beyond the
Metropolis) Act (a).

It is also resolved by the said vestry,

That the following persons, being respectively ratepayers
of the said parish [together with the Rev. N. X., the in-
cumbent of the said parish]. shall be and they are hereby
appointed to be the burial board of the said parish ; that
is to say, A. B., C. D., &c. [not less than three nor more
than nine].

(Signed) G. H.,
Chairman of the said vestry.

(a) Where the approval of the Secretary of State is necessary (20 &
21 Vict. c. 81, s. 9 ; 23 & 24 Vict. c. 64, s. 4), such approval must be
obtained before the appointment of the Board (34 & 35 Vict. c. 33,
s. 1), for which purpose the meeting may be adjourned.

No. 4.

Notice to be sent to the Secretary of State.

15 & 16 Vict. c. 85, ss. x., xi., and 16 & 17 Vict. c. 134,
s. vii.

Sir, [My Lord,]

I have the honour to inform you that a meeting of the vestry of the parish of _____, in the county of _____, was held on the _____ day of _____ instant [last], pursuant to notice, given in accordance with the provisions of the acts 15 & 16 Vict. c. 85, and 16 & 17 Vict. c. 134 [18 & 19 Vict. c. 128], and 20 & 21 Vict. c. 81; and that the following resolution was passed at such meeting, viz. :—

NOTICE TO
SEC. OF
STATE.

[Copy resolution and append signature of the chairman of
the meeting.]

To the Secretary of State,
Home Office,
Whitehall.

No. 5.

Summons for Meeting of Burial Board.

15 & 16 Vict. c. 85, s. xiii., and 16 & 17 Vict. c. 134, s. vii.

Sir,

We hereby summon a meeting of the burial board of the parish of _____, to be held at _____, on _____ the _____ day of _____, instant [next] at _____ o'clock in the _____ noon, for the purpose of [object of such special meeting must be clearly defined, and forty-eight hours' notice at least is required].

SUMMONS
FOR
MEETING.

To

} Members
of the said
Burial Board.

No. 6.

Certificate to Overseers for Payment of Expenses incurred by the Burial Board.

15 & 16 Vict. c. 85, s. xix., and 16 & 17 Vict. c. 134, s. vii.

We hereby certify that the sum of _____ has been incurred by the burial board of the parish of _____, in the county of _____, in carrying into execution the several acts

CERTIFICATE
FOR
EXPENSES.

CERTIFICATE
FOR
EXPENSES.

relating to burials beyond the metropolis ; that is to say, for expenses in providing and laying out a burial ground under the said acts [and building the necessary chapel (or chapels) thereon] ; and you are hereby authorised and directed to pay such sum out of the rates for the relief of the poor in the said parish to _____ for and on behalf of the said Burial Board.

Given under our hands _____, the _____ day of _____, 18 ____.

To

} Members of the
said Burial Board
[three at least].

No. 7.

Mortgage of Poor Rates.

15 & 16 Vict. c. 85, s. xx. ; 16 & 17 Vict. c. 134, s. vii. ;
and 20 & 21 Vict. c. 81, s. xix.

MORTGAGE
OF RATES.

We, the burial board for the parish of _____, in the county of _____, in consideration of the sum of _____, with the sanction of the vestry of the said parish, and with the approval of the Commissioners of her Majesty's Treasury (testified by the signatures of two of them hereunto affixed) to us advanced and paid by _____, the receipt of which said sum of _____ is hereby acknowledged, do by virtue of the powers vested in us by the acts 15 & 16 Vict. c. 85, 16 & 17 Vict. c. 134, and 20 & 21 Vict. c. 81, hereby charge the poor rates of the said parish with the payment to the said _____, his executors, administrators, and assigns, of the principal sum of _____, [by the instalments following, that is to say, the principal sum of _____ (being one _____ part of the said principal sum of _____) on the _____ day of _____ next, and the like principal sum of _____ on the _____ day of _____

_____ in every succeeding year until the whole of the said first-named principal sum of _____ is discharged,] together with interest [thereon or on so much thereof as or on the principal which shall from time to time remain due] after the rate of _____ per centum per annum, to be payable half-yearly to the said _____, his executors, administrators, and assigns.

Given under our hands and under the seal of the burial board for the parish of _____, in the county of _____ this _____ day of _____, one thousand eight hundred and _____ (L.S.)

No. 8.

Transfer of Mortgage.

15 & 16 Vict. c. 85, s. xx. ; 16 & 17 Vict. c. 134, s. vii. ; and
20 & 21 Vict. c. 81, s. xix.

I, A. B., of _____, in consideration of £ _____ sterling
already paid to me by C. D., of _____, do hereby assign and
transfer unto the said C. D., his executors, administrators, and
assigns, all the principal sum of £ _____ secured to me by a
mortgage under the seal of the burial board for the parish
of _____, in the county of _____, dated on or about the
_____ day of _____, and numbered _____ in the register
of the said board [*if a second transfer, add, and which mort-*
gage, together with the principal and interest monies secured
thereby, was assigned to me by a transfer, dated, &c.], and all
interest now due and henceforth to become due in respect
thereof, together with the said mortgage security, and all my
interest in the rates thereby charged, and all powers and
remedies for recovering, receiving, and giving effectual discharges
for the said principal and interest monies hereby assigned.

TRANSFER OF
MORTGAGE.

In witness whereof I have hereunto set my hand and seal
this _____ day of _____, 18 ____.

N.B.—This transfer is to be registered within thirty days
from the date. See p. 54 (note), and 122.

No. 9.

Terminable Annuity Deed.

15 & 16 Vict. c. 85, s. xx. ; 16 & 17 Vict. c. 134, s. vii. ; and
20 & 21 Vict. c. 81, s. xxi.

We, the burial board for the parish of _____, in
the county of _____, in consideration for the sum of
£ _____ sterling, with the sanction of the vestry of the said
parish and with the approbation of the Commissioners of Her
Majesty's Treasury (testified by the signatures of two of them
hereunto affixed), to us advanced and paid by A. B., the receipt
whereof is hereby acknowledged, do, by virtue of the powers
vested in us by the acts 15 & 16 Vict. c. 85, 16 & 17 Vict.
c. 134, and 20 & 21 Vict. c. 81, hereby grant unto the said
A. B. yearly, during his life,—or unto the said A. B., his exe-
cutors, administrators, and assigns, yearly during the lives of
the said A. B. and of C. D., of, &c., and E. F., of, &c., and the
life of the survivor of them,—or for the term of _____ years

TERMINABLE
ANNUITY
DEED.

TERMINABLE [not exceeding 30 years] from the day of , the
 ANNUITY annual sum of £ , to be issuing out of and charged
 DEED. upon the poor rates of the said parish of , the first
 of such annual payments to be made on the day of
 next.

Given under our hands, and under the seal of the burial
 board for the parish of , in the county of ,
 this day of , 18 .

(L.S.)

N.B. This annuity is to be registered ; see p. 54 (note), and
 122.

No. 10.

Contract for the Purchase of Land.

15 & 16 Vict. c. 85, s. xxvi., and 16 & 17 Vict. c. 134,
 s. vii.

CONTRACT
 FOR PUR-
 CHASE.

Agreement made the day of , 18 , between
 A. B., of, &c., of the one part, and the burial board of the
 parish of , in the county of , of the other
 part, whereby the said A. B. agrees to sell to the said burial
 board, and the said burial board agrees to purchase at the
 price of , all, &c. [*describing the property*], which
 premises are required by the said burial board for the pur-
 pose of forming a burial ground for [*or for making additions*
to the burial ground of] the said parish of . And it
 is agreed that the said purchase-money of shall be
 paid by the said burial-board to the said A. B. on the
 day of next, at twelve at noon, at the office of ,
 at which time and place the purchase is to be completed, and
 the said burial board is to have possession of the premises.
 And the said A. B. agrees, at his own expense, within
 days from this date, to deliver an abstract of his title to the
 solicitor of the said burial board, and to deduce a good title
 to the premises in fee simple free from all incumbrances. And
 on receiving the said purchase-money, the said A. B. and all
 other necessary parties will convey the premises accordingly to
 the said burial board, or as they may direct.

No. 11.

Conveyance according to 8 Vict. c. 18, and to 15 & 16 Vict. c. 85, ss. xxvii., xxviii., and 16 & 17 Vict. c. 134, s. vii.

I, _____, of _____, in consideration of the sum of _____ duly paid to me [or as the case may be, into the bank] pursuant to the acts 15 & 16 Vict. c. 85, and 16 & 17 Vict. c. 134, by the burial board for the parish of _____, in the county of _____, appointed and constituted under the provisions and by virtue of the said acts, do hereby convey to the said burial board, their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said acts empowered to convey, to hold the premises to the said burial board, their successors and assigns, for ever according to the true intent and meaning of the said acts. In witness whereof I have hereunto set my hand and seal this _____ day of _____, one thousand eight hundred and _____.

CONVEY-
ANCE.

(L.S.)

No. 12.

Conveyance in consideration of a Rent-Charge according to 8 Vict. c. 18, and to 15 & 16 Vict. c. 85, ss. xxvii., xxviii., and 16 & 17 Vict. c. 134, s. vii.

I, _____, of _____, in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by the burial board for the parish of _____, in the county of _____, appointed and constituted under the provisions and by virtue of the acts 15 & 16 Vict. c. 85, and 16 & 17 Vict. c. 134, do hereby convey to the said burial board, their successors and assigns [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof. To hold the said premises to the said burial board, their successors and assigns, for ever, according to the true intent and meaning of the said acts. They the said burial board, their successors and assigns, henceforth yielding and paying unto me, my heirs and assigns, the clear yearly rent of _____ by equal [quarterly or half-yearly, as agreed upon] portions on the day of _____, and the _____ day of _____, in every year, clear of all taxes and deductions, the first payment

CONVEY-
ANCE, RENT-
CHARGE.

CONVEY-
ANCE, RENT-
CHARGE.

thereof to be made on the day of next. In
witness whereof I hereto set my hand and seal this
day of , one thousand eight hundred and .
(L.S.)

No. 13.

*Conveyance where Burial Ground to be held and used as
existing Churchyard, 15 & 16 Vict. c. 85, s. xxvi. ; 16
& 17 Vict. c. 134, s. vii. ; and 18 & 19 Vict. c. 128, s. x.*

CONVEY-
ANCE, TO BE
HELD
AS CHURCH-
YARD

Whereas the burial board for the parish of , in the
county of , appointed and constituted under the pro-
visions, and by virtue of the several Acts of Parliament in that
behalf made and passed, &c., &c., have agreed with A. B., of
 , in the county of , for the purchase of
the piece or parcel of land hereinafter described and intended to
be hereby conveyed as and for a new burial ground, for the parish
of aforesaid, under the provisions of the said acts, at or
for the sum of ; And whereas the ratepayers of the said
parish of assembled at a vestry duly convened on
the day of last, under the provisions of the said
acts, in pursuance of public notice duly given in that behalf,
resolved unanimously that the said new burial ground so pro-
vided for the said parish as aforesaid should be held and used
in like manner, and subject to the same laws and regulations in
all respects as the existing burial ground or churchyard of the
said parish. Now know ye that I the said in con-
sideration of the sum of duly paid to me [*or as the
case may be*, into the bank], pursuant to the Acts 15 & 16
Vict. c. 85, 16 & 17 Viet. c. 134, and 18 & 19 Vict. c. 128,
by the burial board for the parish of , in the county of
 , appointed and constituted under the provisions, and
by virtue of the said acts, do hereby convey to the said burial
board, their successors and assigns, all [describing the premises
to be conveyed], together with all ways, rights and appurte-
nances thereunto belonging, and all such estate, right, title, and
interest in and to the same as I am or shall become seised or
possessed of, or am by the said acts empowered to convey. To
hold the said premises to the said burial board, their successors
and assigns, for ever, to the intent that the same may be held
and used as a burial ground for the parish of aforesaid,
in like manner, and subject to the same laws and regulations in
all respects as the existing burial ground or churchyard of the
said last-mentioned parish, according to the true intent and
meaning of the said acts. In witness whereof I have hereunto
set my hand and seal this day of , one thousand
eight hundred and .

(L. S.)

No. 14.

Contract for Works.

15 & 16 Vict. c. 85, s. xxxi., and 16 & 17 Vict. c. 134, s. vii.

Articles of agreement, made the day of ,
 one thousand eight hundred and , between CONTRACT
FOR WORKS.
 , (hereinafter called the contractor,) for him-
 self, his heirs, executors, and administrators, of the one
 part, and the burial board for the parish of ,
 in the county of , of the other part.

Whereas, the said burial board [after giving fourteen days' public notice expressing the intention of entering into this contract] has accepted the tender of the said , to execute the works described in the schedule hereunto annexed, subject to the terms and provisions hereinafter expressed.

Now, the said , for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said burial board and their successors, that he the said contractor will, in a good, substantial, and workmanlike manner, and with materials sufficient and proper, of their several kinds, execute, perform, and complete all and singular the works mentioned in the specification hereto annexed, or thereby or by this contract implied, or to be reasonably inferred, in and about , according to the said specification, and to the plan and drawings prepared by , and according to such working and explanatory drawings and instructions as may from time to time be furnished by the surveyor for the time being of the said burial board: the several portions of the said works to be respectively finished and completed on or before the times respectively mentioned in the said specification, and the whole of the said works to be finished and completed, and to be cleared of all scaffolding and rubbish, and other impediments, on or before the day of , and the said works to be begun, proceeded with, and completed to the satisfaction of the said surveyor of the said burial board, to be testified by a writing or certificate under his hand.

That if any of the materials used, prepared, or intended to be used by the said contractor shall be considered by the surveyor for the time being of the said burial board as unsound or improper, the said contractor will, upon notice in writing given by the said surveyor, reject and remove the same from the said ground: and in default of such rejection and removal within three days after such notice, it shall be lawful for the said surveyor to cause the same to be removed at the expense and risk of the said contractor, and all expenses thereby occasioned shall either be deducted out of any monies then or thereafter due to him from the said burial board, or shall be

CONTRACT FOR WORKS. recoverable by them of the said contractor as liquidated damages.

That if the said surveyor shall be dissatisfied with any master, foreman, or workman, who shall be employed by the said contractor in the performance of the said works, and shall give notice in writing to that effect to the said contractor, he shall, within forty-eight hours afterwards, discharge from the works such master, foreman, or workman: and if the said contractor shall neglect so to do, it shall be lawful for the said surveyor to discharge such master, foreman, or workman, and to hire and employ any other person in his stead, at the expense of the said contractor; such expense shall be deducted or recoverable as aforesaid.

That if the said surveyor shall consider any part of the work unsound, or improperly executed, the said contractor, on notice in writing given by the said surveyor thereof, shall cause such work to be immediately removed, and properly re-executed, without any extra charge whatever: and if the said contractor shall neglect so to remove and re-execute such work, it shall be lawful for the said surveyor to cause the same to be removed and re-executed at the expense of the said contractor; such expense to be deducted or recoverable as aforesaid.

That if the said burial board shall think proper, at any time before the said works are completed, to make any alterations, additions, or omissions to or in the same, and their surveyor shall give written instructions, signed by him, to the said contractor for such alterations, additions, or omissions; then, but not otherwise, the same shall be done or made by the said contractor: and any alterations, additions, or omissions, if the price be not stipulated in the said specification, shall be measured, or estimated and valued by the said surveyor; and the amount thereof, according to the price or value, shall be added to or deducted from the sum hereinafter mentioned.

That any loss or damage which may happen to the said works, or the materials or implements therein used during the progress of these works from any cause whatever, shall be borne and made good by the said contractor at his own expense.

That, during inclement weather, the said contractor, whenever and so long as thereto required by the said surveyor, will suspend the performance of the works, and effectually cover up and protect the same from injury by the weather.

And the said burial board do hereby for themselves and their successors, covenant with the said contractor, his executors and administrators, that the said burial board, or their successors, will pay unto the said contractor, his executors, administrators, or assigns, the sum of _____, being the price agreed upon, in manner following: that is to say—the sum of _____ per cent. per month on the amount of the work done as it proceeds, the

same to be ascertained by the certificate of the said surveyor, and the remainder of the said sum to be paid within three calendar months after the said surveyor shall certify that all the said erections, buildings, works, and premises have been completely erected, done, and finished to his satisfaction : and it is agreed that the certificate of the said surveyor for the time being shall be final and conclusive between the said parties as to the progress, nature, quality, or completion of the said works, and in all other matters and things relating to the premises.

That if the said contractor shall, from bankruptcy, insolvency, or any cause whatever, be prevented or delayed in proceeding with the said works, according to this contract, or shall not proceed therein to the entire satisfaction of the said surveyor, it shall be lawful for the said burial board to rescind this contract by giving to the said contractor notice in writing, signed by their clerk or surveyor, and also to employ any other builder, workman, or other person, by contract, measure, and value, day work or otherwise, to proceed with the said works, and to complete the same : and on the service of the said notice, this contract shall become void as to the said contractor ; but without prejudice to any right of action which the said contractor may be subject to for any neglect in not proceeding with the said works pursuant to this contract : and the amount then already paid to the said contractor by the said burial board shall be considered to be the full value of the works executed by him, and the said contractor shall thereupon be paid such a sum only as he may be entitled to, the same to be ascertained by such certificate as aforesaid : and the materials, whether prepared or unprepared, which may be at that time on the premises, shall become the property of the said burial board without further payment for the same : and the said contractor shall not in any manner prevent, hinder, or molest the said burial board or the persons employed by them, in proceeding with and completing the said works, and using such materials as aforesaid.

That the giving to or leaving at the usual or last place of abode of the said contractor, his executors or administrators, or the giving to his or their foreman or superintendent of the works, of any notices, instructions, or drawings, to be given or furnished under this contract, shall be deemed good service or delivery thereof to the said contractor, his executors or administrators.

That if this contract be not duly performed, the said shall pay to the said burial board the sum of _____, as and for liquidated damages.

CONTRACT
FOR WORKS.

In witness whereof the said contractor has hereunto set his hand and seal the day and year first above written.

Signed, sealed, and delivered by the }
 above-named , in the }
 presence of . }

The common seal of the said burial }
 hoard was hereunto affixed at a }
 meeting of the said hoard, held on }
 the day of , the date }
 thereof, by , in the pre- }
 sence of . }

No. 15.

Bond for securing the Performance of Contract.

15 & 16 Vict. c. 85, s. xxxi., and 16 & 17 Vict. c. 134, s. vii.

BOND.

Know all men by these presents, that we , are held and firmly bound to in the sum of of lawful money of Great Britain, to be paid to the said or his certain attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves and each of us, and any two of us, our and each of our and any two of our heirs, executors, and administrators, jointly, severally, and respectively, firmly by these presents: sealed with our seals. Dated this day of , one thousand eight hundred and .

Whereas, by a certain contract or agreement, bearing even date with the above obligation, and made between the above-bounden , of the one part, and the burial hoard of the parish of , in the county of , of the other part, the said contracted with the said burial hoard to execute and perform the works therein mentioned in the manner and by the time therein specified, and subject to such terms, provisions, and stipulations as in the said contract or agreement are particularly mentioned and set forth, and as on reference thereto will more fully appear. Now the condition of the above obligation is such, that if the above-bounden , his executors or administrators, do and shall well and truly perform, fulfil, and keep all and every the covenants, clauses, provisoes, terms, and stipulations in the said recited contract or agreement mentioned or contained, and on his part to be observed, performed, fulfilled, and kept, according to the true intent and meaning thereof, then the above bond or obligation

shall become void, or else shall be and remain in full force and virtue.

BOND.

Signed, sealed, and delivered by the
 above-bounden , in the
 presence of .

No. 16.

Notice of Interment.

15 & 16 Vict. c. 85, s. xxxii., and 16 & 17 Vict. c. 134, s. vii.

Sir,—You are requested to give directions that the necessary preparations may be made for the interment, in the burial ground of , of the body of [*name in full, with description, or, if under age, name, address, and occupation of parents*], who died on the day of instant [last], in the parish of . The ceremony will be performed by the Rev. , in the [consecrated or unconsecrated] portion of the ground, in the [grave space, brick grave, or vault] numbered on the plan of the said burial ground [the exclusive right of burial in which has been acquired by the undersigned [for years] in perpetuity].

NOTICE OF
INTERMENT.

I am, &c.,
 A. B.

To the Clerk of the Burial Board
 for the Parish of .

N.B.—This notice must be delivered between [10 and 4] at the office of the burial board days, exclusive of Sunday, prior to any interment. If the right of burial has been purchased, state for what period, and append signature of the owner.

No. 17.

Grant of Exclusive Right of Burial (a).

15 & 16 Vict. c. 85, s. xxxiii., and 16 & 17 Vict. c. 134, s. vii.

We, the burial board for the parish of , in the county of , in consideration of the sum of , paid by , of , the receipt whereof is hereby

GRANT,
RIGHT OF
BURIAL.

(a) It may be doubted whether a certificate of purchase of exclusive right of burial requires a stamp. Under the Act 23 Vict. c. 15, an agreement relating to a matter under the value of £5, is not liable to any duty, but above that amount a sixpenny stamp is required. It may be prudent, therefore, to affix the sixpenny stamp to the documents in question.

GRANT,
RIGHT OF
BURIAL.

acknowledged, do, by virtue of the powers vested in us by the acts 15 & 16 Vict. c. 85, and 16 & 17 Viet. c. 134, hereby grant unto the aforesaid _____ the exclusive right of burial in [*here describe the particular part of the ground or the vault, or other right purchased*], being part of the burial ground provided under the said acts by the bnrial board aforesaid; to hold the same to the said _____, [his heirs and assigns for ever, or for the term of _____ years, as may be agreed upon,] for the purpose of burial, subject, nevertheless, to the payment of such fees or sums as reserved by the said acts.

Given under our hands, and under the seal of the burial board for the parish of _____, in the county of _____ this _____ day of _____, one thousand eight hundred and _____.

(L.S.)

No. 18.

BOOKS FOR USE OF BURIAL BOARDS.

No. 1.—*Order Book*, p. 276.

BOOKS, &c.

For interments including receipts for money paid, and authority to the sexton. This book will contain: *first*, the name and description of the person to be interred, hour and mode of burial, reference to the register, fees paid, &c., all which particulars will remain in the book; *second*, an abstract of such particulars, as instructions for the sexton; *third*, a receipt for the fees, with requisite notice for condnctor of the funeral.

No. 2.—*Interment Book, or Register of Graves*, p. 277,

Serving as an index to the situation of each grave; in which will be entered the exact situation of every grave used, together with the date of each burial (entered short, thus: "5:7:73:"), and reference to the order book for further particulars (a).

No. 3.—*Grant Book*, pp. 277, 273.

For purchased graves and vaults with record of each. Containing form for grants of land purchased for family graves, plots, or vaults.

No. 4.—*Receipt Book*, p. 277.

For all payments except burials, being forms for receipt for payments on any occasion other than an order for burial: *e.g.*, purchase of family graves or plots, and any work executed.

(a) It may be found convenient to have two of these books—one for single and the other for family graves, lettered accordingly on the back and title-page.

No. 5.—Cash Book, p. 278.

Conveniently headed and ruled, distinguishing receipts for burial in consecrated ground from the part not consecrated. The reference to the ledger will be little used, as almost all will be ready-money payments. If found requisite, a small ledger may be provided anywhere.

No. 6.—Monthly Sheet, p. 278.

Headed and ruled to check cash account. This will show the entire transactions of the month, serve to check the cash account, and obviate in most cases the necessity for a ledger.

No. 7.—Register of Burials, p. 279.

The act requires that burials in the consecrated part shall be distinguished in the register from those in the part not consecrated. This may be done by affixing the letters "N. C." to the number of the grave when situate in the latter, or a separate book may be kept, lettered on the back accordingly: either of which will probably be more convenient than the use of different parts of the same book (a).

No. 8.—Certificate Book, p. 279.

Of extracts from register.

No. 9.—Index, p. 280.

Of register, interment book, and grant book, the entries in which should be as far as practicable alphabetically arranged.

No. 10.—Regulations, p. 281.

Suggested for care and conduct of cemeteries, including table of fees, plan, &c.

(a) See also note, p. 86.

No. 2.—*Interment Book, or Register of Graves (a).* INTERMENT.BURIAL GROUND.

SITUATION OF GRAVE.		DATE, AND NUMBER IN ORDER BOOK.											
Letter.	Number.	Date.	No.	Date.	No.	Date.	No.	Date.	No.	Date.	No.	Date.	No.

No. 3.—*Grant Book (a).*GRANT.BURIAL GROUND.*Register of Grants of Graves and
Vaults.*

No.
Name
Rank, Trade, or Profession
Street or Place
Parish, District, or Township
Borough or County
Nature of Grant
Size and Depth
Sum received
Letter
No. in Order Book
Date of Grant

No.

[See Form for Grant of exclusive right of Burial,
No. 17, p. 273.]

RECEIPT.No. 4.—*Receipt Book (a).*

No.
BURIAL GROUND.
Received of
Name
Date
Description
Letter
No. in Order Book
Amount £

No.
BURIAL GROUND.
18
Received of Mr. the
sum of Pounds Shillings
Pence, for *
in Letter No.
£ : :

* A family grave plot and right of building a vault, &c., as the case may be.

Registrar.

(a) See p. 274.

REGISTER.

CERTIFICATE.

No. 7.—Register of Burials (a).

BURIAL GROUND.

Folio

Year 18 .

No. Date.	Name.	Age.	Rank or Profession.	Abode.	Parish or District.	No. in Order Book.	Where Interred.		Signature of Officiating Minister (b).	Signature of Registrar.
							Letter.	No. C. or N. C.		

BURIAL GROUND.

No. 8.—Certificate Book (a).

BURIAL GROUND.

Folio

Extracts from Register.

CERTIFIED EXTRACT FROM REGISTER OF BURIALS.

Year 18

No.	Date.	Name.	Age.	Rank or Profession.	Abode.

Folio

Year 18

Parish or District.	No. in Order Book	WHERE INTERRED.		Signature of Officiating Minister.	Signature of Registrar.
		Letter.	No. C or NC.		

Name

Extract Fee

I hereby certify that the above-written is a true Copy of an Entry in the Register Book of Burials, for

Extracted this day of 18

day of 18

Registrar.

(a) See p. 275.

(b) See note, p. 86.

INDEX.

No. 9.—*Index (a).*

[illegible]

(a) See p. 275.

No. 10.

RULES.

[Suggested Rules, Fees, &c., for Burial Boards.]

BURIAL GROUND.

The Offices are open daily from _____ o'clock until _____, Sundays excepted.

The burial ground is open to the public from seven o'clock a.m. on week-days, until sunset, and on Sundays from two o'clock p.m. until sunset; but children under ten years of age cannot be admitted, except under the care of responsible persons.

TABLE OF CHARGES AND FEES

(Payable to the board after having been approved by the Secretary of State (a)).

	For the Board.	Incumbent.	Officiating Minister.	Clerk.	Sexton.	Total.
Freehold Family Grave Plot, to contain six grave spaces (b)	£ s. d.					
Ditto single grave	3 3 0					
Board fee for each interment.	1 1 0					
Ditto for children under 12 years of age	0 5 0					
Right to construct a vault	0 2 6					
Ditto single brick grave	3 3 0					
Re-opening grave or vault	1 1 0					
Right to erect head and foot stones (c)	1 1 0					
Ditto tomb or flat stone	0 10 6					
Ditto iron palisade	3 3 0					
Use of hand hearse	1 1 0					
Searching Register of Burials once year	0 2 6					
Ditto each additional year	0 1 0					
Certified extract.	0 0 6					
	0 2 6					

Burial fees for non-parishioners half as much in addition.

Incumbent, clerk, and sexton's fees as per custom of the parish, may be printed in the parallel columns, received by the clerk to the board, as *quasi* agent for the parties, and distributed accordingly.

REGULATIONS.

1. All charges for interments, and for the purchase of freehold graves and vaults, monuments, and gravestones, must be paid for at the time the order is given, at the office.

(a) The board fees *alone* must be sent for approval, omitting those for searches and extracts from register.

(b) At this price the ground so actually used will be sold at the rate of 600 guineas per acre.

(c) In many places it has been the custom to divide the ground into different classes, but it would be much better to intermix graves on which monuments are not likely to be placed among those where such erections may be expected; thus relieving the crowded appearance of monuments in one part and the bare appearance of the ground in others, as well as avoiding the perpetuation of vain distinctions.

RULES.

2. Certificate of death to be produced. The name of the parish or district from which the body is removed, and all other information required, to be stated at the time of paying the fees.

3. The time named for a funeral to be that when the procession is to be at the ground, and as it is desirable that the time fixed should be punctually observed, to prevent inconvenience, an extra fee of _____ will be charged when the funeral be more than _____ minutes late.

4. Two days' previous notice to be given for an interment in graves selected by the board, exclusive of Sunday, and three days if a vault or brick grave be required.

[If the requisite notice be not given, an extra charge will be made for working at night.]

5. All brick or stone work in the vaults and graves to be executed by the board.

6. No vault or grave, in which the exclusive right of burial has been purchased, shall be opened without the owner's consent in writing.

7. In all unbricked graves, coffins of wood only to be used; no interment will be allowed nearer the surface than 4 feet for an adult, and 3 feet for a child under twelve years of age. Every coffin in a bricked grave or vault to be separately entombed in an air-tight manner.

8. All foundations, removal and fixing of memorials, to be executed by the board.

9. No foot-stones nor iron railing exceeding 2 feet 6 inches in height allowed, except with the special consent of the board. Head-stones only allowed alternately, not to exceed 4 feet high.

10. Drawings of every monument or gravestone differing from designs previously approved by the board, with a copy of the inscription intended to be inserted, if they contain anything beyond the name, age, and date of decease, to be submitted for their approval; and no monument or gravestone can be admitted without such approval. The number of the grave or vault corresponding with the interment book must also be placed on each monument or gravestone.

11. All private graves and vaults, with the monuments and gravestones, to be kept in repair by the owners. [The board will keep them in repair for a fee of _____ annually.]

12. The hours of interment on week days are fixed from _____ until _____ o'clock (a). For interments at other hours extra fees will be charged. On Sunday, no interments will take place.

A plan of the ground, showing the situation of each grave, is kept at the office, and may be seen without charge.

The burial ground is effectually guarded, and the board forbid any gratuity being received by any of their servants.

All further information to be obtained at the office (b).

The board reserve to themselves the right, from time to time, to make any alterations in the foregoing charges and regulations.

By order of the Burial Board.

Clerk.

(a) This should be fixed with the concurrence of the incumbent.

(b) State where situated.

EXPLANATORY PLAN OF BURIAL GROUND (a).

1	2	3	4	5	6	7	8	9	10	11	12	13	14	and so on
A														A
B													⊙	B
C														C
Aa														Aa
Ba													*	Ba
Ca														Ca
Ab														Ab
Bb														Bb
Cb														Cb
and so on														and so on

Such a mark may indicate that one common interment has taken place in grave space A b 4.
 the grave space C b 8 has been purchased, but no interment yet taken place.
 the purchased grave space B 14 has received three bodies.
 the child's grave B b iv has received one body.

(a) See pp. 277—81.

* Family grave plots.

The following TABLES will afford Specimens of the FEES which have been adopted by some Boards formed under the Burial Acts (a).

FEES.

No. 1.—[POP. above 11,000.]

TABLE of FEES and PAYMENTS fixed and settled by the — Burial Board to be received for interments, Vaults, Graves, and otherwise, in the Burial Ground for the parish of —, pursuant to the Burials (beyond the Metropolis Act, 1853.

	For the Board. (b).	For Incumbents in Consecrated Ground.	For officiating Ministers in Unconsecrated Ground.
On interment of parishioners in a common grave (if corpse not taken into chapel)	£ s. d. Free.	£ s. d. Free.	£ s. d. Free.
The like if carried into chapel	Free.	0 5 0	0 5 0
On interment in a common grave of out-parishioners dying in the union workhouse, or otherwise in the parish, if corpse not taken into chapel	0 10 0	0 6 8	0 6 8
The like if carried into chapel	0 10 0	0 11 8	0 11 8
For a vault in perpetuity to contain four corpses abreast, not exceeding 9 feet deep .	4 4 0	4 4 0	4 4 0
The like, three corpses abreast	3 3 0	3 3 0	3 3 0
The like, two corpses abreast	2 2 0	2 2 0	2 2 0
If more than 9 feet deep, per foot extra .	1 1 0	—	—
For a bricked or boarded grave for one corpse only, not exceeding 9 feet deep	1 1 0	1 1 0	1 1 0
For re-opening a vault or brick grave	0 10 0	—	—
For interments in select situations	1 1 0	—	—
Entry in register of vault or grave in perpetuity	0 2 6	—	—
Certificate thereof	0 2 6	—	—
For erecting a headstone	0 10 6	0 10 0	0 10 0
For erecting a footstone	0 3 6	—	—
For every additional inscription on any stone.	0 2 6	—	—
For erecting or placing a coffin-shaped tomb, or flat stone, or stone slate, or wood enclosure over a grave, not exceeding 18 inches high (without palisades)	1 1 0	1 1 0	1 1 0
For erecting any other tomb, or stone, or palisades only, not exceeding 8 feet by 4 feet	2 2 0	1 1 0	1 1 0
The like, not exceeding 10 feet by 8 feet .	4 4 0	1 1 0	1 1 0
For enclosing any tomb or stone with palisades, any space not exceeding 8 ft. by 4 ft. (extra)	1 1 0	—	—
The like, not exceeding 8 feet square (extra) .	2 2 0	—	—
On erecting any mural monument in chapels, not exceeding 3 feet by 2 feet	5 5 0	5 5 0	5 5 0
For an extra size, subject to agreement . .			

(a) These specimen tables are not given as having any authority; but are merely selected from a parliamentary return to show the kind of scale adopted in some places.

(b) The fees in this column must be approved by the secretary of state, for which purpose they should be submitted separately, having been first published in the district. See also 20 & 21 Vict. c. 51, s. 17, p. 179.

No. 1.—(continued).	FEES.		
	For the Board.		
FOR SEXTON'S FEES.	£	s.	d.
For digging and filling in a grave for a person buried at the expense of the parish or union, and tolling bell	0	2	6
For digging and filling in a common grave for an artisan, labourer, his wife, or child, 3s. ; tolling bell, 1s.	0	4	0
For digging and filling in a common grave for any gentleman or tradesman, or master of business, his wife or child, 5s. ; tolling bell, 2s. 6d.	0	7	6
Every grave to be 6 feet deep ; if above, per foot extra	0	1	0
For digging, excavating, and levelling ground over a vault for two corpses abreast, 9 feet deep, and attending burial	2	2	0
For every additional corpse	0	7	0
For filling up and turfing a grave when required	0	2	0
For tolling chapel bell, if above one hour, extra, and so on in proportion	0	1	0

FOR HAND-BEARSE.

For the use of a hand-bearse within two miles from the burial-ground (without attendants) at the burial of a child under ten years of age at the expense of the parish or union	0	1	6
The like for an adult labourer	0	2	6
The like for a tradesman or any other person	0	5	0
If buried in a brick or walled grave or vault	0	7	6
For every mile, or part of a mile, beyond two miles, extra	0	1	0
<hr/>			
For searching register of burials one year	0	1	0
For every additional year	0	0	6
For each certified copy of an entry therein	0	2	6

All walls of vaults to be 9 inches thick, and every wall between two vaults to be a party wall : all damage to any boundary wall, by making a vault or grave, to be substantially repaired by the party causing the same.

All inscriptions and plans of monuments, tablets, and stones, to be erected in the cemetery or chapels, to be submitted to the board for its approval.

On interments of non-parishioners, all fees and payments (except the 3rd and 4th in this table) to be charged double.

The foregoing fees do not include the parish clerk's fees.

By order of the Board,

[Date]

—, Clerk.

FEES.

No. 2.—[POP. under 5,000.]

BURIAL BOARD, constituted under and by virtue of the Burials Acts, 16 & 17 Vict. c. 134, and 17 & 18 Vict. c. 87, for the Borough of ———.

	For the Board. (a).			For Incumbent in Consecrated Ground.			For officiating Minister in Unconsecrated Ground.			
	£	s.	d.	£	s.	d.	£	s.	d.	
Interment of any person, whether child or adult, at the expense of the parish or union	—	0	1	0	0	1	0	0	1	0
Interment of any other person, being a parishioner	0	5	0	0	2	6	0	2	6	
If a non-parishioner	0	10	0	0	6	8	0	2	6	
Interment in a brick grave, not exceeding 9 feet by 4 feet 6 inches, 10 feet deep, not in perpetuity, site approved by the board .	2	10	6	3	3	0	0	10	6	
For a brick grave, not exceeding 9 feet by 4 feet 6 inches, 10 feet deep, in perpetuity, site approved by the burial board .	1	1	0	—	—	—	—	—	—	
For a double brick grave or vault, not exceeding 9 feet by 8 feet, 10 feet deep, not in perpetuity, site approved by the burial board, including fee on first interment .	5	5	0	3	3	0	—	—	—	
If in perpetuity, extra	1	1	0	—	—	—	—	—	—	
Fee on interment in a vault or brick grave, re-opened for a parishioner	1	1	0	0	10	6	0	10	6	
If a non-parishioner	2	2	0	1	1	0	0	10	6	
Erecting a headstone	0	10	6	0	10	6	—	—	—	
Placing a flat stone over a grave	1	1	0	1	1	0	—	—	—	
Erecting a tomb over a brick grave or vault .	3	3	0	3	3	0	—	—	—	
Inclosing with palisades a single grave or vault	1	1	0	2	2	0	—	—	—	
Ditto a double grave or vault	2	2	0	2	2	0	—	—	—	
For erecting a mural monument in mortuary chapel, not exceeding 24 inches by 18 inches	5	5	0	—	—	—	—	—	—	
For every additional inscription on any headstone, tomb, or memorial	0	5	0	—	—	—	—	—	—	
For certificate of registry of grant of vault or brick grave	0	2	6	—	—	—	—	—	—	
For searching registry of burials, one year .	0	1	0	—	—	—	—	—	—	
For ditto, every additional year	0	0	6	—	—	—	—	—	—	
For each certified copy of entry	0	2	6	—	—	—	—	—	—	
If the interment should take place out of the regulated hours, an additional fee of . . .	0	2	6	0	2	6	0	2	6	
Interment of still-born child	0	2	6	—	—	—	—	—	—	
For digging a common grave	0	7	6	—	—	—	—	—	—	
For tolling bell of parish church if ordered .	0	2	6	—	—	—	—	—	—	

No. 3.

[POP. above 4,500.]

TABLE of FEES and PAYMENTS in respect of Interments in the Cemetery at ———, in the Consecrated or Unconsecrated Ground. Established under the Statute 16 & 17 Vict. c. 134, and the Acts incorporated therewith. Opened 1st December, 1854.

Interments of Parishioners (graves 6 feet deep) ; (a).

	£	s.	d.
Ground A to B	1	10	6
Ground B to C	1	0	6
Ground C. to D	0	13	6
For every foot after 6 feet, and down to 9 feet, an addition per foot of	0	1	6
For every foot after 9 feet, an addition per foot of	0	2	6

Non-parishioners (same depth) :

Ground A to B	2	10	2
Ground B to C	1	15	2
Ground C to D	1	4	8
For every foot after 6 feet, and down to 9 feet, an addition per foot of	0	1	6
For every foot after 9 feet, an addition per foot of	0	2	6

Children, Parishioners, and Non-parishioners :

From 1 year up to 12 years	0	9	6
Infants	0	7	0

Erection of Gravestones, Monuments, &c. :

A charge of 15s. will be made in addition to the above when any grave, head, body stone, or monument is erected ; and any additional ground beyond two feet six inches in width will be charged at the rate of 6s. a foot, over and above and in addition to the surplice and other fees for the stones.

Fee for tolling the bell (if required), 1s. in addition to the above.

a) As to fees payable to the board, see note p. 284.

FEES.

No. 3—(continued).

Hours of interment in the consecrated or unconsecrated ground, nine o'clock a.m. to six o'clock p.m. from the 25th March to 29th September, and from the 29th September to 25th March, nine o'clock a.m. to four o'clock p.m. Interments on Sundays will be taken at the following hours only: for the consecrated ground, at two o'clock p.m.; for the unconsecrated ground, at one o'clock p.m.; at which hours respectively the funeral procession must be punctually on the ground.

Orders for funerals must be given to the sexton two clear days (exclusive of Sunday) before the funeral, and all fees and charges must be paid at the time the order is given.

By order of the Board,

———, Clerk.

By resolution of vestry of the inhabitants of this parish, this board is authorised to pay to the dissenting minister officiating at funerals the same amount or fee as that payable to the incumbent in respect of church funerals.

[Date.]

———, Clerk.

FEES.

No. 3—(continued).
EXPLANATORY TABLE OF FEES, showing the Apportionment.

	Vicar's Fees.	Sexton's Fees.	Clerk's Fees.	Total.	Board's Charges for Opening the Ground (a).	Total Charge for Interment.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
Interments of Parishioners (graves 6 feet deep) :						
Surplice fee, ground A to B . . .	0 3 0	0 6 6	0 1 0	0 10 6	1 0 0	1 10 6
„ ground B to C . . .	0 3 0	0 6 6	0 1 0	0 10 6	0 10 0	1 0 6
„ ground C to D . . .	0 3 0	0 6 6	0 1 0	0 10 6	0 3 0	0 13 6
Non-parishioners (same depth) :						
Vicar's fee for breaking the ground, A to B.	0 6 8	0 6 6	0 1 0	1 0 2	1 10 0	2 10 2
Surplice fee	0 6 0	—	—	—	—	—
The like, B to C	0 12 8	0 6 6	0 1 0	1 0 2	0 15 0	1 15 2
The like, C to D	0 12 8	0 6 6	0 1 0	1 0 2	0 4 6	1 4 8
Children, Parishioners and Non-parishioners :						
From 1 year up to 12 years . . .	0 3 0	0 4 0	0 0 6	0 7 6	0 2 0	0 9 6
Infants	0 3 0	0 2 0	0 0 6	0 5 6	0 1 6	0 7 0

(a) See Notes, p. 284.

FEES.

No. 4.—[POP. under 170,000.]

TABLE of FEES *determined on by the BURIAL BOARD of* ———.

CHARGES AND FEES : (a)

Interments of Parishioners :		£	s.	d.
1st class (adults)	.	2	2	0
2nd class (adults)	.	1	5	6
3rd class (adults)	.	0	15	0
Interments of Non-parishioners :				
1st class (adults)	.	3	3	0
2nd class (adults)	.	1	17	6
3rd class (adults)	.	1	2	6

The above charges in all cases provide for the tolling of the bell.

A deduction of one-third of the interment fees is allowed for children under 12 years of age.

Fees payable to Vicar from each Interment :

1st class.	In each adult interment.	0	6	0
"	" child's "	0	4	0
2nd class.	" adult "	0	4	8
"	" child's "	0	3	1½
3rd class.	" adult "	0	4	2
"	" child's "	0	2	9½

Fees payable to Church Trustees :

1st class.	In each adult interment.	0	12	0
"	" child's "	0	8	0
2nd class.	" adult "	0	5	0
"	" child's "	0	3	4
3rd class.	" adult "	0	2	6
"	" child's "	0	1	8

Charges for Ground for private Graves or Vaults for Parishioners or Non-parishioners, in addition to the Interment Fees :

For a single private grave, 6 ft. 6 in. by 2 ft. 6 in. in the clear of brickwork, and 7 ft. deep, with the right of placing a flat or head stone	3	3	0
For a double private grave, 6 ft. 6 in. by 4 ft. in the clear, and 9 ft. deep	5	15	0
For a private grave, 6 ft. 6 in. by 6 ft. 6 in., and 9 ft. deep	11	11	0
For a private grave, 6 ft. 6 in. by 9 ft., and 9 ft. deep	15	15	0

An extra charge will be made for a step entrance to any private grave, or for additional depth, viz. 1s. 6d. per foot, from 7 to 10 feet ; 2s. 6d. from 10 to 14 feet ; 3s. 6d. from 14 to 17 feet ; 5s. from 17 to 20 feet ; excavating, 3s. per cubic yard.

(a) As to fees payable to the board, see note, p. 284.

FEES.

No. 4—(continued).

Fees payable to Parish Clerk :				£	s.	d.
1st class.	In each adult interment	.	.	0	4	0
"	" child's	"	.	0	2	8
2nd class.	" adult	"	.	0	1	6
"	" child's	"	.	0	1	0
3rd class.	" adult	"	.	0	1	6
"	" child's	"	.	0	1	0
Fees payable to Sexton :*						
1st class.	In each adult interment	.	.	0	4	0
"	" child's	"	.	0	2	8
2nd class.	" adult	"	.	0	3	6
"	" child's	"	.	0	2	4
3rd class.	" adult	"	.	0	3	0
"	" child's	"	.	0	2	0
Fees for Non-parishioners, add one-half more.						

The same charges are made for interments in the unconsecrated as in the consecrated ground, and the same fee is allowed to Dissenting ministers as to the officiating clergyman.

———, Clerk.

[Date.]

* The office of sexton has recently been abolished, and the duties undertaken by the Board, who now receive the sexton's fees.

SUGGESTIONS FOR BURIAL BOARDS
PROVIDING AND MANAGING BURIAL GROUNDS,
AND MAKING
ARRANGEMENTS FOR INTERMENTS BY THE INSPECTOR
UNDER THE
BURIAL ACTS OF 1852-3-4-5-7-9, 1860, 1871, &c.

Approved by the Secretary of State (a)

— • —

SITUATION.

SITUATION.

The site for a burial ground should be chosen far enough from dwellings, to secure their inmates from danger or annoyance, and near enough to the mass of the population, to avoid as much as possible increasing the cost and inconvenience of conveying funerals a too great distance.

Small burial grounds may with propriety be established nearer to a town than larger ones, and nearer to towns which are slowly than to such as are rapidly increasing. It is desirable to choose a site towards which the town is not extending, both because such a situation is not likely to be encroached upon by houses, and because land not in demand for building is cheaper, and more of it may therefore be obtained at moderate cost. Land at building-ground price is generally too dear for graves. It is often, however, more economical to pay a rather higher price for land, than to fix the burial ground at such a distance as to render carriages necessary for all the funerals, the annual cost of which may exceed the saving of interest on the extra price of the land: the object being to keep down the charge of the entire funeral, not merely to secure cheap graves, the cost of which is often a small part only of the whole expense. Many burial grounds are much used as public walks, for which purpose they would be useless at too great a distance from the population.

The Burial Act of 1855 requires that no ground (not already used as or appropriated for a cemetery) shall be used for burials, *under this Act*, unless the consent in writing of the owner,

lessee, and occupier of every dwelling within 100 yards of any ground to be so used shall be previously obtained. The object of this provision is doubtless to enable owners of houses to protect their property from depreciation, as well as to guard the occupiers from annoyance or risk of injury. It is evidently important to avoid selecting a site for which many such consents must be obtained, but it is not necessary (as some have supposed) that no house whatever shall be within that distance, nor is the consent of the owners or occupiers of houses within that distance indispensably necessary in all cases. When a new burial ground is provided or an old one enlarged otherwise than under the Burial Act, the consent of the owners, lessees, and occupiers of dwelling-houses within 100 yards should, if possible, be obtained, and, if refused, evidence should be offered to show that no danger of injury or annoyance is to be reasonably apprehended. Burial grounds not provided under the act are very generally intended for a much smaller number of burials than those usually so provided, and may therefore be properly and safely allowed at a less distance from habitations.

SITUATION.

SOIL AND DRAINAGE.

The quality of the soil is of great importance. Dry, open soils which readily admit air and moisture, allowing the rain which falls upon the surface to enter readily, carrying air down with it, facilitate decay, and permit graves to be sooner re-opened for subsequent interments. Porous soils, mixed with vegetable mould, absorb and decompose the products of decay, and prevent the escape of injurious emanations, if the quantity of animal matter be not too large in proportion to the area, and if the soil near the coffin be left undisturbed until decomposition is completed. Dense clay soils are in all respects undesirable; they exclude air and moisture, retard decomposition, and render it improper to reopen a grave, to nearly its original depth, within any reasonable period. In some such soils coffins have remained undecayed for thirty years or more, and therefore graves in such soils can be used a very limited number of times only. They are moreover expensive to drain; they retain the gases of decomposition, and sometimes crack, possibly allowing dangerous exhalations to escape. It is so difficult and expensive to remedy these defects, that it is better to select an open than a clay soil, even though the site be moderately more distant, or more costly. In some such cases the plan has been adopted of enclosing separately every coffin buried in concrete or cemented stone or brick-work, the extra cost of which is to be set against the diminished cost of less excavation, and less rapid filling of space.

SOIL AND DRAINAGE.

Soils which have no proper mould, and which consist chiefly of stone, may allow of the passage of decomposed emanations,

SOIL AND
DRAINAGE.

and it is difficult and expensive to supply the mould in which they are deficient. It is always desirable, before deciding upon a site, to have the soil examined in various places to the depth of at least eight feet.

The neighbourhood of any open reservoir or conduit conveying water used for domestic purposes should be avoided, and great care must be taken that there are no wells, or streams supplying water so used, liable to be polluted by drainage from graves.

Land which cannot be effectually drained, so as to prevent water remaining in any vault or grave, or which is liable to be flooded, is unsuitable. Several fatal accidents have been caused by the foul water from a grave or vault bursting in upon another grave made near it. Great reluctance is felt to burying a coffin in a wet grave, and it is very disagreeable and sometimes dangerous to bale water on to the surface.

As is well known, dense soils are rendered less so when effectually drained, and such are thereby rendered less unsuitable for burial purposes. Sometimes when deep drainage is required, it will be sufficient to construct one or more deep drains through the cemetery without any artificial connexion with the graves; but when the soil is very dense, the only effectual mode of preventing accumulation of foul water in the grave is by laying a pipe or broken stone drain from grave to grave, and so connecting them all with the main drain. In some such cases this cost has been diminished by making the first graves next to the drain, and merely opening the soil between the bottom of the grave and the drain, taking care to put at the bottom of every grave some gravel or other porous material. This plan has been found effectual for maintaining a passage for the water without great cost.

The surface water has been successfully managed in three different ways in soil too dense to allow of percolation. In some such cases great care has been taken by ramming in the soil to prevent surface water entering the grave, but this is difficult and costly; in other cases a line of drain pipes has been laid just below the surface soil at the upper end of each row of graves to catch the surface water which would otherwise trickle into them; the third plan has been to place drain pipes vertically in the corner of each grave to convey any water which may enter it direct to the drain at the bottom of each. The necessity for adopting any of these expedients shows the importance of avoiding, if possible, a soil so dense as to require them.

In a few instances, when it was impossible to obtain a sufficient outfall for the drainage, the water has been removed by pumping; in other cases, escape for the water has been obtained by sinking a shaft through the impervious stratum which retained it, into a pervious stratum below. Very careful preliminary examination will be necessary, and no difficult

modes of drainage should be resorted to, unless advised by a person of skill and experience; or very heavy expense may be incurred. In all cases care must be taken not to risk the pollution of water used for domestic purposes.

SOIL AND
DRAINAGE.

In some cemeteries clay soil has been improved by mixing sand or gravel with that with which graves are refilled, to render it porous. It has been proposed to use burnt clay for this purpose.

PATHS AND ROADWAYS.

As burial grounds ought to be conveniently accessible at all seasons of the year, it is very important that the roads be of very hard material; and there should be ample provision of footpaths fit to walk upon in the wettest weather.

PATHS AND
ROADWAYS.

At Nottingham, Chesterfield, Sheffield, and some other of the midland and northern towns, roads and footpaths for gardens and cemeteries have been formed somewhat resembling asphalt, but very much cheaper. They are made by iron furnace cinder, or other hard material, bound together by gas tar, boiled down to a sort of pitch, only just enough to bind the material together being used, and sprinkled with sparkling spar to render them ornamental. This material is stated to be very suitable for a footpath which must be used in all weathers; being always hard and free alike from dirt or dust, cheap, durable, easily repaired, and requiring no weeding. No one possesses any patent right to make this asphalt, but those accustomed to make it are likely to do so best. It is rather extensively used at railway stations, and may be kept in good repair at small cost.

Some burial grounds have a footpath between every second row of graves, so that access to any may be obtained without walking on the grass. There is rarely occasion for incurring this expense, as the grass path, which may be easily left by so arranging that the ends of the graves shall be alternately rather less and rather more apart, will be usually all that is needed for giving access from the main path to all the graves, without trampling upon any. When the ground is wet and soft a temporary pathway of planks may be laid upon the grass paths.

FENCING AND PLANTING.

The official regulations (a) require simply that the burial ground shall be effectually fenced, so that it may be protected from trespassers or from the intrusion of any animals which may injure the monuments, plants, or trees, leaving the sort of fence undetermined. When the burial ground is among fields, a good hedge, which may be strengthened by stretched wires, is all that is often thought necessary, with a dwarf wall

FENCING
AND
PLANTING.

(a) See p. 94. [A. N.]

FENCING
AND
PLANTING.

and rail, if there be any public road adjoining. A favourite plan is a sunk fence with a wall on one side only, and evergreen or other hedge on the top. High walls are generally objected to as unsightly, unnecessarily expensive, and impeding the free passage of air. Sometimes, however, walls are useful to increase the seclusion of the cemetery, or to shelter it from cutting winds, which might prevent the growth of trees and shrubs.

In almost all cases burial boards have been desirous of obtaining more ground than is absolutely required, in order that part may be devoted to ornamental planting, and sites are often chosen on which ornamental trees already stand. Growing vegetation is not only useful for ornament, but for absorbing and rendering harmless the products of putrefaction. Trees, by their roots, carry off the products of decay, and enable a cemetery to serve some of the purposes of a public walk or garden, by making it a place of safe, quiet, and agreeable resort; and when cemeteries are, as is usual, ornamentally laid out and well kept, they are a source of great gratification and advantage; they are especially resorted to on Sunday afternoons, and are much valued by those who have little other opportunity of taking out-door exercise except during part of their day of rest. Very little complaint has been made of improper behaviour by those who resort to the cemeteries, except when the practice of burial on Sundays has been continued, when the presence of numerous spectators has often been found very inconvenient. Many burial boards have, to avoid this and other serious evils, limited burials on Sundays to those before morning service, greatly to the advantage of the servants of the burial boards, of the undertakers and their men, and, as is believed, of those who before buried their dead on Sundays, who, it is asserted, spent more in funeral expenses on Sundays than they saved by not giving up their earnings on a week day. The serious inconvenience that must be caused by imposing extra duty on ministers of religion on the days when they are otherwise most engaged is evident.

As cemeteries are frequented at all seasons, it is well to have a large proportion of evergreen trees, some of which, such as the cypress and yew, are peculiarly appropriate; but there should be mixed with them deciduous trees and some of quick growth, to relieve the bareness of newly enclosed ground, to be removed when no longer needed.

“Mr. Loudon recommends for planting in cemeteries trees chiefly of the fastigate growing kinds, which neither cover a large space with their branches nor give too much shade when the sun shines, and which admit light and air to neutralize any mephitic effluvia. Of these there are the oriental arbor vitae, the evergreen cypress, the Swedish and Irish juniper, &c. For the same reason, trees of the narrow conical forms, such as the red cedar, and various pines and firs, are desirable. In

advantageously situated cemeteries, some of the larger trees, such as the cedar of Lebanon, the oriental plane, the purple beech, the dark yew, and the flowering ash, sycamores, mountain ash, hollies, thorns, and some species of oaks, such as the evergreen oak, the Italian oak, with flowering trees and shrubs, would find places in due proportion." *

It is of importance that trees and shrubs should not cover too large a portion of the burial ground, and that they should not be too closely planted, or should be thinned out as they grow large, to avoid interfering with the ventilation and with the free passage of air. A suitable disposal of trees or shrubs along roads or pathways would afford shelter to persons visiting graves, and to funeral processions. It is customary in well-regulated cemeteries to avoid burying close to the boundary fence. On many accounts this is advisable, as there is no law to prevent houses being built and wells sunk close to a burial ground; there is, moreover, a disposition to erect houses in the vicinity of ornamental cemeteries. Much of the evil may be prevented by draining the ground in such a manner as to prevent the water passing into the subsoil of the neighbourhood, and by the adoption of proper regulations as to burial; but it would nevertheless be advisable to leave a belt of land for planting between the fence and the nearest graves. This strip of ground would not be wasted, for part of it might be used as a walk, and part for ornamental shrubs. A surrounding belt of shrubbery would contribute to the seclusion of the ground, and need not be so close as to check too much the free passage of air.

SIZE OF GRAVE SPACES.

The official regulations (a) require that grave spaces for persons above twelve years of age be nine feet long by four feet wide, or four square yards; and for children under that age, six feet long by three wide, or equal to two square yards; the average size (where two sizes are used) will therefore be rather more or rather less than three square yards, according as there is a larger or smaller proportion of children's burials, that is, generally, according to the sanitary condition of the district.

It will be noticed that these dimensions are conveniently commensurate with each other; that the length of two large grave-spaces is equal to that of three small ones, and in breadth three large ones equal four small ones; thus the space occupied by six large grave spaces, namely 18 feet long by 12 feet wide, may be divided into twelve small grave spaces in three rows of four each, or the reverse. This coincidence simplifies the laying out of the ground, and renders it easy without waste to intermix large and small grave spaces, so as to allow those for children and their parents to be near each other, instead of in

* Supplementary Report on the Practice of Interment in Towns.

(a) See p. 94.

SIZE OF
GRAVE
SPACES

distinct parts of the cemeteries, which would otherwise be necessary.

These are the sizes of the grave spaces sanctioned by Parliament at the Woking Common Cemetery, and are less than have been adopted in many cemeteries abroad. In some Austrian cemeteries the grave space for adults is equal to 90 square feet; at Wirtemberg it is above 54 square feet; at Munich and Stuttgart it is 32 square feet, which is about the size some English cemeteries have adopted, though in many they are much less. The object of a large grave space is to secure such a quantity of soil as will effectually absorb the gases of decomposition, and such a separation between the graves as will prevent risk of the soil falling when the next grave is dug, while the space left at the head of the grave affords room where a monument may stand undisturbed, and, by so arranging that the rows of graves may be alternately nearer and more distant, space for a grass path between every alternate row of grave spaces may be left, and access given to every grave without trampling over any.

DEPTH OF GRAVES.

DEPTH OF
GRAVES.

If bodies are buried at too small a depth beneath the soil, the emanations may not be effectually absorbed; if at too great a depth, needless expense is incurred; and if no objection were felt to the future disturbance of mere dry bones, a depth of four to six feet beneath the surface would be sufficient.

There is, however, so strong and natural a repugnance to having the bones of the dead dug up, that the plan is frequently adopted of burying at a depth of 8 to 10 feet (if the ground be free from water), with the intention of re-opening the grave after a lapse of time, not quite to its original depth, but as nearly so as is possible without digging up any bones that may remain; thus the same grave may be buried in many times before it becomes so full of bones as to be unfit for further use.

Burial Boards have generally made such ample provision of ground that graves may remain unopened for much longer periods than are fixed by the official regulations, and it is therefore probable that the retardation of decomposition in consequence of the depth of graves will occasion no inconvenience.

The principle of interment generally adopted is that of allowing one body only to be in a grave at the same time, as the rule; more than one, as the exception. The exception is in the case of family graves, which may be re-opened when a death in the same family occurs. This exception is, however, generally speaking, more apparent than real, for deaths in the same family do not, on the average, occur within intervals too short to allow of decomposition, and where they do the regulation re-

quires that a layer of earth, a foot thick at least, shall be left undisturbed above each coffin. It would be well, however, if even such exceptions could be avoided, as they often are, by adopting the plan of burying members of the same family in adjoining graves instead of in the same grave, a less costly plan than that of building walled graves if earthen graves be sold in plots at not much more than their cost to the Burial Board.

These regulations (except the last precaution) being similar to the immemorial custom of country churchyards in England, in respect to single interment, the regulation would merely make that the universal, which was before the general rule.

By adopting this plan, the same grave may be used many times without digging up remains, without danger of having more animal matter at one spot than the soil and vegetation can absorb, and without making that painful distinction between classes, which the practice of burying one body only in each private grave, but several, not related to each other, in the public graves, involves.

The economy of burying several bodies in a grave at a time is more apparent than real, for unless the grave be dug very deep, which is costly, or unless the coffins be packed close together, which is dangerous, a grave cannot hold so many coffins at once as might be safely buried in it at intervals, allowing for the decay of each corpse before another is buried, until the soil becomes too full of bones to be used any longer with propriety. Some burial boards, however, consider it more economical to incur the cost of digging very deep graves to hold several bodies each, rather than to have as many separate graves opened as there are burials; the objections to this plan are, however, very serious.

In many country churchyards it has long been the custom to allot to families a space of ground enough for several graves, so that relatives are buried side by side, not over each other, the graves being opened in succession, so that a very long interval must elapse before any such grave is re-opened. Burial boards may adopt a similar plan with advantage; if family grave plots, enough to bury from three to six members of a family side by side, were sold at less than the cost of walled graves, it is probable many such would be taken (a). The advantage would be, the family could, at a less cost than that of a walled grave, obtain, as secure and as distinctive, a permanent place of sepulchre which would serve for generations, and the burial board would receive what is now paid to bricklayers. This plan is likely to be more acceptable than the use of vaults, if the land is charged for at a price proportionate to its cost. About 200 plots, large enough to permit of the burial of four adults and three children without re-opening a grave, may be

(a) See plan, p. 233

DEPTH OF
GRAVES.

laid out in an acre of actual burial surface. For every pound, therefore, charged, in addition to fees, for such plots, the available surface would be disposed of at the rate of 200*l.* an acre, and if offered at a price not much above what is sufficient to cover the cost, so many family plots would probably be sold, that a large part of the first cost of the cemetery would be defrayed without practically being a burden to any one.

A burial board could, without loss to the ratepayers, sell such graves in anticipation of the time when they would otherwise be purchased, at a very large reduction of price, because the purchaser by paying for them so long beforehand would in effect be paying compound interest on the sums charged during the interval. Every pound received fourteen years before it would otherwise be received is worth about two pounds if the payment be deferred; and if a family purchase three graves instead of one at once, and pay the cost of two graves for them, the ratepayers will be relieved by the transaction, for in the ordinary way the graves purchased in anticipation would produce no income, as they do if they be paid for and the money either invested and the debt on the burial ground reduced. In some cemeteries family grave plots are sold, consisting of three grave spaces surrounded with a space for shrubs and flowers. In others the portion allotted for unpurchased graves is laid out in rows of grave spaces with flower beds nine feet wide between. When the graves are filled the flower beds can be moved on to the graves, and new graves dug in the space at first occupied with flowers; thus room for ornamentation is obtained without cost for ground.

RE-OPENING OF GRAVES.

RE-OPENING
OF GRAVES.

The time necessary for the complete decay of bodies buried varies according to the nature of the soil, the depth of the grave, the quality and thickness of the wood of coffins, the dryness or moisture of the soil, and the age of the body. In an ordinary soil the bodies of adults decay (all but the large bones) in about ten or twelve years, and of children in about half that time; but in dense clay, coffins are scarcely affected after being buried thirty years, and sometimes very much longer. The regulations permit graves to be re-opened fourteen years after the burial of a person above twelve, and eight years after the burial of a child below twelve years of age. Generally, after these intervals, nothing but large bones will remain. If, however, decay should have been retarded, the coffins must not be broken, or the remains dug up, nor must any soil which is offensive be disturbed, but if, after a sufficient interval to allow of the complete decay of the body, the coffin is still undecayed, a second coffin may be placed beside it without disturbing either it or any other coffin if wide grave spaces be allowed. It will

rarely happen that it will be necessary to reopen graves so soon, as new burial grounds are generally provided of area sufficient to permit of much longer intervals between the burials in the same grave.

In order to give effect to these regulations, the area which is to be used for burial should be laid out in grave spaces, and a plan of the cemetery will be required, on which every grave space should be shown, with the marks of reference.

It is necessary, to avoid mistakes in the re-opening of graves, and for other important purposes, to keep a register of graves (as well as the register of burials required by the Burial Act), in which are to be recorded the name, age, and date of interment of every one buried in each grave, with reference to the marks (a) in the burial ground, by which it may be identified. Very serious dissatisfaction has sometimes been caused by the register of graves having been carelessly kept, whereby graves, sold for the exclusive use of one family, have been intruded upon for the burial of others, the aggrieved families complaining of having lost that for which they have been highly charged and greatly value.

BURIALS IN VAULTS, ETC.

Whenever vaults or walled graves are used, the regulations require, especially to prevent the escape of foul air when they are re-opened, that each coffin be separately entombed. This is generally done by placing immediately over each a flag or slab of stone resting upon a ledge in the wall, closely cemented down, to be never raised again. When this plan is adopted decay is much retarded, the gaseous products escape very gradually through the pores of the cement and brickwork, they are to a great extent decomposed, and appear to be diffused as fast as they escape, for when such vaults are opened the space above the slab covering the coffin is found free from offensive air. This method is not only cheaper but safer than the use of lead coffins, which are often not air-tight, sometimes burst, and are liable to be broken. Cases of such accident have occurred when the coffin has been air-tight and has confined putrid gas in a highly concentrated and dangerous state, very serious and even fatal injury having been sustained by those who were near when the coffin was broken; and very frequently vaults containing bodies enclosed in lead are found to be offensive when opened for a subsequent burial, to avoid which it is not uncommon to leave openings for the escape of such foul air, to the evident risk of those who may go near them. For these reasons the official regulations require that all coffins not buried in the

(a) Markers for this purpose are advertised made in pottery of various kinds, by (among others) Mr. B. Looker, jun., of Kingston-on-Thames; and, made of silicious stone, by Mr. F. Ransome, Ipswich. [AUTHOR'S NOTE.]

BURIAL IN
VAULTS, &c.

soil shall be permanently entombed by stone or brickwork in an air-tight manner.

Sometimes the entombment is effected by means of concrete made by mixing about seven parts of clean coarse gravel, or stones broken small, with one part of quick lime and as much water as is needed to make mortar, in which the coffin is embedded, which hardens around it, enclosing it completely, and preventing any further escape of gases except such as slowly ooze through the pores of the artificial stone thus formed.

The surface of the graves should be covered with fresh turf, or planted with flowers or shrubs. High mounds are undesirable, being difficult to keep in order: a very small rise will mark the grave, if that be desired, and will not much obstruct the mowing of the grass. Covering stones are objectionable, as they prevent the free entrance of rain into the grave, retard decomposition, and postpone the period for re-opening. Headstones are free from this objection, but they are commonly made so large and of such forms as to be disfiguring. One of the easiest ways of increasing the beauty of a burial ground is to select a number of good designs for monuments, and to admit none else without special permission, on the design being approved by the burial board. It is common to leave the selection of the design to the nearest mason, who is not likely to be a person of refined taste, and the result is, that burial grounds are almost universally disfigured by badly designed monuments, often with inappropriate epitaphs (*a*).

CONVEYANCE OF THE DEAD.

CONVEYANCE
OF THE
DEAD.

Burial boards are enabled by the 41st section of the act of 1852 to make arrangements for facilitating the conveyance of the dead to the burial ground. Some boards have procured hearses, others have entered into contracts for the supply of hearses and carriages at a fixed price, accepting the offer they considered most for the benefit of the public. Others have procured wheeled biers or hand hearses, to diminish the labour of carrying the dead and avoid the necessity for employing a double set of bearers, which would otherwise be necessary when the distance is considerable (*b*). A burial guild has very much reduced the cost of burial to its poorer members by lending pall, cloaks, and hoods; though such seems hardly to be the province of a burial board, the members individually might usefully assist their neighbours by forming voluntary associations for such purpose. Such a guild may effect all the useful purposes

(*a*) Mr. W. H. Buckland, of Maesteg Iron Works, Bridgend, manufactures monumental tablets and head-stones of a new material, formed of iron slag, which is stated to combine great beauty with cheapness and durability. Designs for monuments, &c., are published by Mr. W. Lawrie, of Downham Market. [AUTHOR'S NOTE.]

(*b*) See note, p. 90. [A. N.]

of a burial club without the danger supposed to attend the payment of money to those who have had care of the deceased. The arrangement proposed is that members of the guild should subscribe to raise a fund sufficient to insure the funeral expenses for such of them as may die, but that instead of paying any money to the friends of the deceased, payment is made direct to the undertaker employed by the guild to conduct the funeral as agreed. The undertaker being secure of payment, and desirous of retaining the business of the guild, charges much less than he otherwise could afford to do. While decent solemnity is observed, all useless expense for funeral display is discouraged, and poor families can thus be saved from the temptation to spend more than they can afford, often already impoverished by sickness and death in the household. The costs of funerals for the poor, who have a strong desire for a decent appearance at such times, can be much diminished by the guild lending them pall, cloaks, and hoods to cover the clothes of those who cannot buy new mourning. Such arrangements may not be exactly within the province of a burial board, but there are few ways in which the independent poor can be helped so much and so acceptably.

CONVEYANCE
OF THE
DEAD.

RECEPTION HOUSE.

The establishment of a place appropriate for the reception of the dead previous to interment would in some cases facilitate the conveyance of funerals and relieve the poor from risk of injury by the occasional long retention of the bodies of the dead in crowded dwellings, especially in cases of death from infectious diseases, such as small pox, scarlet fever, &c.

RECEPTION
HOUSE.

The 42nd section of the Burial Act of 1852 authorizes the establishment of such places, and much valuable information on the subject is contained in the Supplementary Report on the Practice of Interment in Towns, of 1843. As is therein stated, p. 31, "In a large proportion of cases in the metropolis, and in some of the manufacturing districts, one room serves for one family of the labouring classes: it is their bedroom, their kitchen, their wash-house, their sitting-room, and their dining-room; and when they do not follow any out-door occupation, it is frequently their work-room and their shop. In this one room they are born, and live, and sleep, and die, amidst the other inmates." From a statistical inquiry instituted and carried out at the expense of the Earl of Harrowby by Mr. Weld, secretary of the Statistical Society, "it appeared that 1,465 families of the labouring classes (in the inner ward of St. George's, Hanover Square) had for their residence 2,175 rooms and 2,510 beds," and 623 out of 1,465 families had only one bed each.

Similar conditions prevail very extensively, as has been shown by evidence collected from all parts of the country, and

RECEPTION
HOUSE.

given in the "Report on a General Scheme of Extramural Sepulture."

When death takes place in such overerowed living-rooms the corpse is laid out and kept therein until the period of interment. It is sometimes stretched out on two chairs; or it occupies the only bed in the room; the inmates pursue their avocations around it; they eat beside it; the children play beside it; oftentimes the corpse is in an advanced state of putrefaction before it is removed for burial; offensive putrid effluvia are disengaged, and the spread of disease in consequence is not of unfrequent occurrence (*a*).

During epidemics all these evils are of course greatly aggravated. Overerowed living-rooms furnish the largest number of attacks and deaths, and there is the greatest risk of the dead being unduly retained among the living, under the very circumstances where danger from such detention is the greatest. Instances are given in the report already cited of two and even three corpses lying in the house at the same time during the prevalence of the epidemic cholera of 1848-1849 (*b*). The danger from the long retention of the dead is apt to be greatest where the practice of Sunday funerals is continued. In such places it is not unusual to put off the funeral until the next Sunday at least, and often until the next but one. The proportion of bodies brought for burial in an offensive state is considerably larger on Sundays than on other days, because of such frequent postponement.

The object is to enable reception-houses for the dead to be provided wherever the local circumstances similar to those mentioned may appear to render such provision necessary. The use of these houses is optional; and hence it is advisable, wherever they are established, to make them attractive both in external appearance and in internal arrangements and management. In some of the more recently erected cemetery chapels an arrangement has been made which might serve some of the purposes of places for the temporary reception of the dead before burial, as well as their chief object, that of protecting the mourners attending the funeral services from annoying or dangerous emanations from the dead. In these chapels a portion has been divided off from the main building by a glass screen, which completely separates the part in which the coffins are placed from that occupied by the mourners, and it is easy to make this separated portion large enough to hold several coffins, where they might remain without danger until preparation is made for the funeral.

(*a*) See notes, pp. 21 and 92. [A. N.]

(*b*) Report on a General Scheme of Extramural Sepulture, p. 162.

SIZE OF BURIAL GROUNDS.

SIZE OF
BURIAL
GROUNDS.

The proper size of a burial ground depends upon the number of deaths rather than on the amount of population, as the death rate varies considerably according to the sanitary condition of the district and other circumstances. The burial space actually required may be approximately estimated from the following data :—

1st. The probable number of burials, making allowance for increase of population.

2nd. The size of the grave spaces, which may be on the average rather more or rather less than three square yards, according as the proportion of deaths among children is less or more than half of the total deaths.

3rd. The interval which must elapse before the graves can with propriety be re-opened, which depends partly upon the proportion of the deaths of young children, as the bodies of the young decay most rapidly ; and partly on the character of the soil.

In addition to actual burial surface, some space, which is seldom less and often much more than one-sixth of the whole, will be wanted for approaches, roads, paths, sites for buildings, and for ornamental planting.

Burial boards have rarely thought it expedient to obtain no more land than would merely permit observance of the official regulations, but have almost invariably obtained enough to allow of much more lengthened periods for graves to remain unopened (a).

Burial boards have frequently no data for accurately estimating the proportion of persons likely to be buried according to the rites of the Church of England, and are consequently at a loss to determine what proportion of the land ought to be

a) In determining the size of cemeteries, there are considerations of economy, of taste, and of personal feeling. The first of these will have great weight in large towns, where land is extremely valuable ; the latter will be more regarded in rural parishes, where land is cheap, and where, from the small number of funerals, persons are accustomed to see another generation pass away before the remains of the last are disturbed. The question of ornamental additions to the cemetery may be pretty equal in both cases ; as in towns the greater value of some extended space which may serve for a public walk or cemetery garden, is a set-off against the increased price of the land. It has, therefore, been found in practice, that no very general rule can be laid down in relation to the size of burial grounds, having regard to soil and population alone ; and the question has been determined in various proportions in different parts of the country. It may be sufficient to state, that in a favourable soil, with purely sanitary and economical considerations in view, a quarter of an acre per thousand of the population would be sufficient ; and that supposing feelings of delicacy as well as ornamental purposes to enter into the calculation, double that quantity would be a liberal allowance. In most cases it has been found that the larger quantity is preferred. [AUTHOR'S NOTE.]

SIZE OF
BURIAL
GROUNDS.

consecrated, and it is generally thought expedient to leave a part of the unconsecrated portion in the first instance unappropriated, to be added hereafter either to the consecrated or not consecrated portion, as may hereafter prove desirable, and thus avoid rendering it useless, which would happen if more were consecrated than necessary. This difficulty of estimating the proportion in which burials will be divided is another reason for securing rather more space than absolutely necessary.

SECOND
BURIAL
GROUND.

The 3rd section of the Burials Amendment Act of 1857 authorizes the establishment of more than one burial ground in a district. This is in some instances expedient; for example, when a district is so large that one burial ground, where-soever situated, must be very distant from some part of it; or when the enlargement of a churchyard is desired, and it is impossible or inconvenient to provide burial ground for Nonconformists at the same place, or when it may be convenient to enlarge a chapel-yard also, or to establish a separate burial ground for the use of Nonconformists.

EXEMPTION
FROM TOLL.

The 14th section of the Act, 1857, exempts from toll, after June, 1858, persons attending the funeral of any person buried in burial grounds provided under the Burial Acts for the place in which he died. This provision diminishes the objection sometimes urged against a site to reach which a toll-bar must be passed.

MEASURES
OF PRECAU-
TION.

The 23rd section of the act of 1857 contains provisions to which it is desirable that attention should be directed. This section authorizes her Majesty in Council to order such acts to be done by or under the direction of the churchwardens or such persons as may have care of any vaults or places of burial for preventing them becoming or continuing dangerous to the public health; the expense incurred to be paid out of the poor rates. This would provide for the burial or entombing of coffins which may be insufficiently enclosed in vaults beneath places of worship, or for the covering old burial grounds with grass, or the adoption of other precautions to prevent danger.

SITES FOR
BUILDINGS.

It may sometimes be expedient to obtain, as the entrance to a new burial ground, or as sites for chapels or other buildings, an old burial ground which has been closed. This is authorized by the 26th section of the Act of 1857. Care will be requisite that no soil in an offensive condition or human remains be disturbed in digging foundations for building or otherwise: if the disturbance of such remains be unavoidable, the licence of the Secretary of State authorizing their removal should be applied for. See 20 & 21 Vict. c. 81, s. 25, which prohibits the removal of any body or the remains of any body (except where

REMOVAL OF
BODIES.

a body is removed from one consecrated place of burial to another by faculty) without licence by the Secretary of State, and with such precautions as he may prescribe. The friends of persons buried in closed burial grounds sometimes desire to have them removed to the new burial grounds. This is illegal without such faculty, or the licence of the Secretary of State. The removal of only partially decayed remains cannot be safely effected without very carefully observed precautions.

REMOVAL OF
BODIES.

By the 18th section of the Burial Act of 1855, 18 & 19 Vict. c. 124, it is directed that the Burial Board or churchwardens, as the case may be, shall maintain a churchyard or burial ground of a parish, which has been closed for burial by order in council, in decent order, and repair the walls and fences, and that the costs shall be repaid from the poor rate if no other fund be legally chargeable. There are very many closed burial grounds which the churchwardens cannot keep in order, having no funds, and all income from burial fees having stopped. A very moderate expense would render many of these grounds ornamental instead of disfiguring, and it is much to be desired that such expense should be incurred, as it is very distressing to those whose friends have been interred, to see their resting place in a state of neglect and disorder.

MAINTENANCE OF
CLOSED
BURIAL
GROUND.

HOME OFFICE.

DIRECTIONS

AS TO THE

APPOINTMENT AND PROCEEDINGS OF BURIAL BOARDS

UNDER THE

BURIAL ACTS OF 1852-3-5-7, AND 1860.

HOME
OFFICE.

Duty of
church-
wardens,
&c.

It becomes the duty of churchwardens or other persons to whom it belongs to convene meetings of vestry, to call a meeting in the nature of a vestry after due notice to determine whether a new burial ground shall be provided:—

1. When, in pursuance of the burial acts, notice has been given by the Secretary of State of his intention to recommend the closing or regulation of the existing burial ground of any parish. 18 & 19 Vict. c. 128, s. 3.
2. On the requisition of ten ratepayers, without any previous proceeding. 15 & 16 Vict. c. 85, s. 10.
3. Or, where no burial board has been appointed, such meeting may be called at any time at the discretion of the churchwardens. 18 & 19 Vict. c. 128, s. 3.

If it be resolved that a burial ground shall be provided, a burial board may be appointed for the purpose, to consist of not less than three or more than nine members, of whom the incumbent, though not a ratepayer, may be one, 15 & 16 Vict. c. 85, s. 11. A copy of the resolution signed by the chairman must be sent to the Secretary of State. 15 & 16 Vict. c. 85, s. 10 (*).

Places for
which burial
boards may
be ap-
pointed. (†)

A burial board may be appointed for the following places without any previous approval:—

1. Any parish or place separately maintaining its own poor (15 & 16 Vict. c. 85, ss. 10 & 52), with no district divided from it for ecclesiastical purposes having a separate burial ground (see No. 5).

(*) Useful forms of notices and proceedings, as also of books for the use of burial boards, are given in Mr. Baker's manual of "The Laws relating to Burials"—W. Maxwell, London.

(†) In boroughs, the town council may become the burial board; for provisions relative to which see 17 & 18 Vict. c. 87.

HOME
OFFICE.

2. Two or more united parishes maintaining their poor in common, and having one common burial ground. 18 & 19 Vict. c. 128, s. 11.
3. A parish, towship, or other district, not separately maintaining its own poor, which has or which has not a separate burial ground. 18 & 19 Vict. c. 128, s. 12. —20 & 21 Vict. c. 81, s. 5.

And the vestries of any parishes which have resolved to provide burial grounds may concur in providing one burial ground for their common use, the expenses to be apportioned, and in that case the burial boards appointed for such parishes shall act as one joint board for such purpose. 15 & 16 Vict. c. 85, s. 23.

A burial board may also be appointed, *the previous sanction of the Secretary of State having been obtained*, for,—

Cases where approval of secretary of state is required.

4. United parishes, one or more of which separately maintains its own poor, or has a separate burial ground, 18 & 19 Vict. c. 128, s. 11, 20 & 21 Vict. c. 81, s. 9.
5. A parish which has been divided into two or more ecclesiastical districts, any one of which has a separate burial ground, 23 & 24 Vict. c. 64, s. 4.
6. If a burial board be first appointed for a district of a parish as indicated (No. 3), it has been established by judicial decision that the remainder of such parish may afterwards appoint a separate burial board, *Viner v. Tunbridge*, 28 L. J., M. C., 251 Q. B. ; 5 Jur., N. S., 1293 (a).
7. And if, after a burial board has been appointed for an entire parish, a district of such parish (No. 3) appoint a separate burial board, the powers of the parish vestry or burial board will cease within such district, except that the ratepayers may remain liable for their share of the expenses incurred by the original board, or at least, prior to such separate appointment, *R. v. Walcot, St. Swithin*, 31 L. J., M. C., 221 (b).

Where the provision of a burial ground becomes necessary for a parish divided into two or more townships or ecclesiastical districts it may therefore be desirable in order to give assurance of the acquiescence of all parties interested, and to secure due expedition and unanimity of purpose, to call a vestry for the entire parish, and also meetings to be held on a subsequent day in each separate district. Then in case the resolution to provide a burial ground for the whole parish be carried, subject to the approval of the Secretary of State, it will be open to the ratepayers of each district either at once to appoint a separate burial board or to make their request to the Home Office to be excluded from the rest of the parish, which may then proceed either with or without such objecting

Best method of procedure in divided parishes.

(a) See p. 222. [A. N.]

(b) See p. 241. [A. N.]

HOME OFFICE.	districts, as may be decided, and all future inconvenience thereby prevented.
Necessity for caution.	It is necessary that all the proceedings should be strictly regular, inasmuch as the board will probably require to borrow money, which could not be raised if any doubt exist as to the validity of the security, <i>R. v. Wright</i> , 8 Jur., N. S., 260 (a).
Approval of secretary of state to new burial grounds.	When an Order in Council has been issued affecting any limits, no new burial ground therein can be opened without the previous approval of the Secretary of State, 16 & 17 Viet. c. 134, s. 6; and such new ground having been approved cannot afterwards be closed, 15 & 16 Viet. c. 85, s. 7; therefore in purchasing land burial boards should be careful to contract subject to the approval by the Secretary of State of the site.
Borrowing of money.	For the expenses of purchasing and laying out burial grounds so approved and building chapels thereon (all which expenses must be sanctioned by the Vestry, 15 & 16 Viet. c. 85, s. 19), the Public Works Loan Commissioners, with the sanction of the Treasury, are empowered to advance money to burial boards on security of the rates, to be repaid by any number of annual instalments not exceeding thirty, &c. (15 & 16 Viet. c. 85, ss. 20, 21; 20 & 21 Viet. c. 81, ss. 19, 20, 21.)
Caution in cases where no order has been made.	A burial board may be appointed without an Order in Council having been issued, in which case the approval of the new burial ground to be provided is not absolutely required; but inasmuch as such new ground might be closed, and thus become worthless as a security, it is necessary whenever the rates are to be mortgaged, and desirable in all cases, that the Secretary of State's sanction to the use of any new burial ground should be obtained prior to the purchase of the land.
Consent of owners, &c., of houses within 100 yards of new burial grounds.	In addition to the Secretary of State's approval, it is provided that no new burial ground established under the Burial Acts can be used for burials within 100 yards of any dwelling house, without the consent in writing of the owner, lessee, or occupier thereof (18 & 19 Viet. c. 128, s. 9); all such necessary consents therefore should be obtained prior to any application for approval by the Secretary of State.
Part of burial ground to remain not consecrated	Part of any burial ground provided by a burial board must remain not consecrated (16 & 17 Viet. c. 134, s. 7), unless at a vestry, <i>specially</i> called for the purpose, it be <i>unanimously</i> resolved that such new ground shall be held and used in all respects as the existing churchyard; in which case another ground not consecrated may be provided within ten years (18 & 19 Viet. c. 128, s. 10).
More than one burial ground may be provided.	Any burial board may provide more than one burial ground, and provide separate and distinct grounds, consecrated, and not consecrated (20 & 21 Viet. c. 81, s. 3).

Such separate ground, or the division of any one into consecrated and not consecrated portions, must be approved by the Secretary of State (16 & 17 Vict. c. 134, s. 7; 20 & 21 Vict. c. 81, s. 3).

HOME
OFFICE.

Provision of
chapels.

Such chapels may be built as the burial board deem requisite; but the plan of that to be consecrated must be approved by the bishop of the diocese, and that not consecrated by the Secretary of State.

If a chapel be built on the consecrated ground, another must also be provided on the other portion (15 & 16 Vict. c. 85, s. 30; 16 & 17 Vict. c. 134, s. 7), unless the Secretary of State, upon the representation of three-fourths of the vestry specially convened for the purpose, relieve the burial board from such obligation (18 & 19 Vict. c. 128, s. 14).

Such chapels may be provided or used in common by burial boards of any two parishes having adjoining burial grounds, who may, with the Secretary of State's approval, contract for the purpose (18 & 19 Vict. c. 128, s. 16).

By an Act of 1871 to explain the Burial Acts (the 34 & 35 Vict. c. 33), it is provided that when the approval of the Secretary of State is required for the appointment of a burial board, the vestry shall by resolution declare the expediency of such appointment, notice of which shall be sent to the Secretary of State, and his approval obtained *before* such appointment is made. When making application for such approval it should be stated in what manner the ratepayers of all the districts to be affected have been informed of what is proposed, and whether or not there is any opposition, and, if there be, by whom and for what alleged reasons.

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